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# POLITICAL SCIENCE QUARTERLY

A REVIEW DEVOTED TO THE HISTORICAL STATISTICAL  
AND COMPARATIVE STUDY OF POLITICS

ECONOMICS AND PUBLIC LAW

Univ. of  
California

EDITED BY  
THE UNIVERSITY FACULTY OF POLITICAL SCIENCE  
OF COLUMBIA COLLEGE

VOLUME EIGHTH

GINN AND COMPANY  
NEW YORK, BOSTON, AND CHICAGO, U.S.A.  
LONDON: HENRY FROWDE, OXFORD UNIVERSITY-PRESS WAREHOUSE  
BERLIN: PUTTKAMMER AND MÜHLBRECHT

1893

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# POLITICAL SCIENCE QUARTERLY.

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## MR. MARCY, THE CUBAN QUESTION AND THE OSTEND MANIFESTO.

### I.

THE difficulties growing out of the relations of the United States with Cuba, which confronted President Pierce in March, 1853, were inherited difficulties. During half a century Cuba had been on the "order of the day." John Quincy Adams, Clay, Van Buren, Webster and Clayton, during their respective terms at the head of the Department of State, had all officially recorded the interest of the United States in the island, and on several occasions the government's unwillingness to see it pass into the hands of any European power other than Spain had been proclaimed. In 1825, moreover, when the English government suggested a joint declaration by Great Britain, France and the United States, that they would not permit Cuba to be wrested from Spain, Mr. Clay declined to enter into treaty stipulations embodying such a guarantee. As to the acquisition of Cuba by the United States, Mr. Clayton took the position in 1849 that, after the rejection of the proposition made by the late administration on this subject, "should Spain desire to part with the island, a proposition for its cession to us should come from her."

In 1851, our minister at Paris informed the Department of State that a treaty had been entered into between France, Spain and Great Britain to guarantee Cuba to Spain, and that England had ordered her vessels to proceed to that island to protect Cuba against unlawful invasion from the United States. Mr. Webster, then secretary of state, was at the time in Massachusetts. He wrote to the president expressing

doubts whether England would do a thing so rash as to interfere with American vessels on the high seas under the pretense that they contained Cuban invaders, and declaring that the United States could never submit to such interference. On April 23, 1852, separate notes of a common tenor and the draft of a tripartite convention were transmitted to the secretary of state by the ministers at Washington of France and England. One of the articles of the convention declared:

The high contracting parties hereto severally and collectively disclaim, both now and ever hereafter, all intention to obtain possession of the island of Cuba, and they respectively bind themselves to discountenance all attempts to that effect on the part of any power or individuals whatever.

Mr. Webster replied a few days thereafter that the president "will take the communication into consideration and give it his best reflection." No further answer having been made, by reason of the illness of the secretary of state, the French and English ministers, on July 8, 1852, again invited the attention of the Department of State to the proposed treaty. Their respective notes were again identical, except that each minister wrote in his own language, and the purport of the notes was a vindication of the right of England and France to intervene. It was pointed out that Spain was heavily in debt to British and French subjects, and that the burden of maintaining in the island an armed force of 25,000 men was a very considerable one for the Spanish treasury. The British and French ministers insisted that the proposed treaty had only two objects,—one, a mutual renunciation of the acquisition of Cuba, and the other, the enforcement of respect for this renunciation. Mr. Everett, having become secretary of state on the death of Mr. Webster, replied to these two notes on December 1, 1852, only three months before the inauguration of President Pierce. He said that the president could not become a party to the proposed convention. He denied that the federal constitution permitted the treaty-making power to impose on the government such a permanent disability as

would be involved in a pledge for all coming time not to purchase Cuba as it had purchased Louisiana and Florida. The French and English ministers having in their communication put forward, as a reason why such a treaty should be concluded, "the attacks which have lately been made on the island of Cuba by lawless bands of adventurers from the United States with the avowed design of taking possession of that island," Mr. Everett replied that the president was convinced that such a treaty, instead of stopping those proceedings, would give a new and powerful impetus to them — would give a death blow to the conservative policy hitherto pursued in this country toward Cuba; and that no administration at Washington could stand a day under the odium of having stipulated with the great powers of Europe, that, in no future time and by no amicable arrangement with Spain or act of lawful war, should Cuba make itself independent of Spain, and by no overruling interest of self-preservation should the United States ever make the acquisition of Cuba.

The policy of Fillmore, Webster and Everett was blamed in Congress and in the newspapers. It was condemned by powerful organs of Whig opinion in New York, which regretted that Fillmore did not bring his administration to a brilliant close by the acquisition of "the pearl of the Antilles," and so prevent the incoming Democratic administration from accomplishing the beneficent result.

It was in that condition that the administration of Pierce found the Cuban question on March 4, 1853. The matter was presented to Secretary Marcy by notes from the British and French ministers, delivered on April 18, 1853, criticising and protesting against propositions contained in Everett's communication. At a personal interview with the two ministers, on the occasion of the presentation of the notes, Marcy intimated that it would be necessary for him carefully to examine the previous correspondence in order to comprehend its full import, but that, so far as he could then form an opinion, England and France, without denying the right of the United States to decline the proposals, only desired

to protest against some of his predecessor's contentions, lest thereafter it might be inferred that England and France had acquiesced therein. The two ministers intimated a preference that the discussion should be considered as closed by the communications they had just made. Even if Marcy did not fully concur with Everett's treatment of the proposition made by England and France, it would have been obviously inconvenient for him to reopen the subject from a different point of view, and therefore he made no formal reply. Mr. Everett, however, who had in the meantime taken his seat as a senator from Massachusetts, made by letter an elaborate answer to Earl Russell's subsequent speech in the House of Lords, sharply criticising Everett's note of the previous December.

## II.

Historians of the period covered by Pierce's administration, notably von Holst, Schouler and Rhodes, have attempted an injustice to the diplomacy of that administration in dealing with the Cuban question. They have, in the first place, said much of dissensions on the subject in the cabinet. Their statements are erroneous. The drafts of the preliminary instructions and of the subsequent notes sent by Marcy to our ministers at Madrid, London and Paris in regard to Cuba were read, criticised, strengthened in cabinet, and finally revised by the president, and the despatches, when sent forth, had behind them the faithful support of every one of his official advisers.<sup>1</sup> There were learned, vigorous, self-reliant and independent men in that administration, but that each of them was devoted to his chief, the president, may be inferred from the unbroken four years continuity of the cabinet, the first and only instance in our annals. Each realized that to the president alone had the constitution committed the conduct of foreign negotiations.

<sup>1</sup> The writer was in the most intimate official relations with President Pierce throughout his administration, and many of the statements of the text are based upon personal knowledge. The account of the diplomatic correspondence is drawn directly from the official publications of the government.

When he invited debate in cabinet over action proposed, opinions were expressed, but when he gave his decision the question was closed. One may safely challenge, at the end of nearly forty years, the production of an authenticated remark made by any member of that cabinet in depreciation of the patriotism, the fidelity,—official and personal,—the sagacity and the prudence of its chief, President Pierce.

By publicists and experts the conduct of the foreign affairs of the country during the four years from 1853 to 1857 is now generally commended as conspicuously honorable and brilliant, not only by reason of the propositions of public law it maintained and the intellectual vigor of their vindication, but also by reason of the skill with which it kept our foreign affairs out of the slavery whirlpool in Congress. The disparaging view taken by the historians to whom reference has been made is due to the fact that the imagination of the writers has been entirely submerged by the slavery question in its domestic aspects, and the pursuit of the truth as to Marcy's diplomacy has been misled by the superficial, uninformed and intensely partisan newspaper writers of the day. This is evident from a glance at the authorities cited in the footnotes of those histories. It is as if an historian in the year 1950 should, in ascertaining the truth concerning the conduct of President Harrison and Secretary Blaine, depend on the utterances of the partisan newspaper writers of 1889-92, and of editors disappointed in applications for office. Undoubtedly the slavery question infected and dominated our domestic politics from 1853 to 1857. Undoubtedly that infection made navigation of the ship of state by the executive difficult and perilous; but that difficulty and peril have made more honorable, meritorious and conspicuous the diplomacy of Marcy, and the fidelity to him of Pierce's cabinet. Were the matter not so serious, in an historical aspect, there would be a strong element of the ludicrous in the efforts of modern historians to inject "the slave power" into Marcy's great diplomacy, wherein he had no more thought of that power (excepting so far as it might come between the president

and the Senate) than of the Seminole war, or the war of 1812. Excited partisans, north and south, made an honorable and efficient diplomacy difficult then as they do now; but it is as silly as it is misleading to represent that diplomacy as the facile tool of the "slave power," or of the "Know-Nothing power," or of "the Garrisonian-Abolitionist power." The influence that controlled all was the unsullied traditions of the Department of State, then in the hands of a very great and a very wise man.

In respect to Cuba, the difficulties encountered by Marcy were greatly increased by the character, the temperament and the insubordination of our minister at Madrid; but that fact, which should be put to the credit of Marcy's diplomacy, is used by the historians to his disparagement. The appointment of Soulé turned out to be a serious blunder.<sup>1</sup> He had, like Motley in later times, a plan of his own. Soulé, as every one now sees, wished to be the colleague instead of the diplomatic servant of his chief at Washington. It may be asked why he was not promptly recalled. The question is easier asked than answered, so many were the considerations presented. One may get on the track of one or two of these by recalling what befell President Grant when he recalled Motley, and by reading section twenty-one, pages 159-162, in a memoir of Motley by the fascinating pen of Oliver Wendell Holmes. If Soulé had displayed in his mission the subordination, the deference, the obedience to orders, which European diplomacy has found so useful in generals of the army, or prelates of the Roman Church, made diplomatists, Marcy's labors would have been less, but the great reputation he achieved among those who were and are familiar with the actual situation, would also have been less. Perhaps Soulé was "taking his cue" from Slidell, as Motley did from Sumner.

It is represented by the historians named above that Marcy's diplomacy in regard to Cuba was unsteady and fluctuating in

<sup>1</sup> It was Talleyrand who said: "*L'art de mettre des hommes à leur place est le premier de la science du gouvernement*" (the saying is not of to-day's invention); "*mais celui de trouver la place des mécontents est à coup sûr le plus difficile.*"



its main purpose, and that this resulted from his vacillation between the "slave power" and its adversaries in the Northern states. In fact his only object was to preserve the honorable diplomatic traditions of the United States, and keep the negotiations — the question of peace or war — in the hand of the president. Let us try to ascertain the truth by examining the record.

### III.

Our minister to Spain having tendered his resignation, it became necessary for President Pierce immediately to select a successor. Soulé was then, and had for six years been, a senator from Louisiana. His term expired in 1855. He represented a state in which there were conflicting opinions in regard to the acquisition of Cuba, the sugar planters rather inclining to oppose such acquisition. His selection as minister was generally approved, if the great number of commendatory letters written to the president by prominent men in each party, residing in different parts of the Union, can be accepted as evidence.

Early in the summer of 1853, Marcy began the preparation of instructions regarding Cuba to Mr. Buchanan, at London, as well as to Mr Soulé at Madrid. Those to the former had special reference to an intervention by England already made, and which, there was reason to believe, was likely to be repeated. In the instructions to Buchanan of July 2, 1853, Marcy said that the course of England and France in sending their ships of war to our coasts during the late disturbances in Cuba was "not respectful to this republic," because there was nothing in our history as a nation to justify the suspicions of us that inspired that action, even although the oppressed in a European colony on this continent had as good a right to invoke the aid of friends as had the oppressors. He pointed out that it was on the suggestion of England that the United States had protested against intervention by the Holy Alliance on this continent to aid Spain in suppressing the South American republics. While declaring his unwillingness to believe that Spain and England intended to render Cuba worthless by Africanization, and an annoyance to the United States when

Spain could no longer retain possession of it, he yet felt that the evidence of such a purpose came to Washington from too many sources to be utterly disregarded. His position was stated in a sentence which has gone into many text-books of international law: "Cuba must be to the United States no cause of annoyance in itself, nor can it be used by others as an instrument of annoyance." In this instruction Marcy definitely authorized Buchanan to say to England that the president would repress unlawful military enterprises begun in and carried on from the United States against the authority of Spain in Cuba; and yet the historians try to persuade their readers that such suppression was an afterthought.

The instructions to Soulé began by telling him that the recent proposition by England and France to guarantee Spanish rule over Cuba indicated the general European opinion to be that Spanish dominion over the island was insecure. The new minister at Madrid was distinctly warned that nothing would be done by the president to disturb the present relations of Spain to Cuba, "unless the character of that connection shall be so changed as to affect our present or prospective security." He was, however, told that the president would resist the transfer of Cuba to any European power, or the setting up of a protectorate over the island by any European power, Marcy adding that the United States saw in Central America what a foreign protectorate meant. In regard to filibustering, carried on from the United States against Cuba, Marcy said that "while Spain remains, in fact as well as name, the sovereign of Cuba, she can depend upon our maintaining our duty as a neutral nation towards her, however difficult it may be." He directed Soulé to use all his efforts to allay suspicion at Madrid "that our government was disposed to connive at the participation of our citizens in the past disturbances of that island, and would again do so on the recurrence of similar acts." Then, referring to what had been done by President Polk, of whose cabinet Marcy was a member, he said that then it was not proposed to acquire Cuba "unless its inhabitants were very generally disposed to concur

in the transfer." Marcy was careful to say to Soulé that "it is scarcely expected that you will find Spain, should you attempt to ascertain her views upon the subject, at all inclined to enter into such a negotiation" for the concession of the island to us; and he added his belief "that Spain is under obligation to England and France not to transfer the island to the United States." The promptness with which these two powers sent their vessels to Cuba in 1851-52 indicated that to him. In order that the purposes of the president might not be doubtful to Soulé, he was warned that, "in the present aspect of the case, the president does not deem it proper to authorize you to make any proposition for the purchase of that island." The only thing which Soulé was specifically required to do was to gather accurate information in regard to the subject, and send it to Washington. Especially was he instructed to gather facts in regard to the Africanization of the island. Only on one topic was Soulé permitted to initiate negotiations at Madrid, and that was an arrangement by which the captain-general should be invested with authority to hold political intercourse with the diplomatic or consular agents of the United States in Cuba, in order to accomplish prompt explanations and redress when wrongs had been committed upon American citizens or their property in that island.

It will be seen thus that save in the single matter last mentioned Soulé was explicitly directed to abstain from negotiations and to act simply as a reporter. He disregarded his instructions and made a plan of his own which, as was not seen till some time thereafter, he endeavored to execute in his own way.

There was much that was inconvenient in the circumstances under which Mr. Soulé entered upon his mission. The real features of the alliance between Spain, on the one hand, and England and France, on the other hand, in relation to the island, were unknown, although it was known that in 1851 Lord Palmerston, as minister of foreign affairs, had instructed the British ambassador at Madrid

to say to the Spanish minister that the slaves form a large portion, and by no means an unimportant one, of the people of Cuba, and

that any steps taken to provide for their emancipation would therefore, as far as the black population is concerned, be quite in unison with the recommendation made by Her Majesty's government that measures should be adopted for contenting the people of Cuba, with a view to secure the connection between the Spanish crown and the island, and it must be evident that, if the negro population of Cuba were rendered free, that fact would create a most powerful element of resistance to any scheme for the annexation of Cuba to the United States, where slavery exists.

What plans the Emperor of the French had in mind were even less well known. He may even then have had in contemplation the scheme which he attempted in 1861, when he sent an expeditionary army to Mexico and set up there a fictitious emperor, in order, as declared in his letter to General Foret, and as has been otherwise proved, to cripple the United States. He intervened at Madrid to prevent the reception of Soulé.

During 1853 nothing of especial importance occurred between Madrid and Washington or between Marcy and Soulé, excepting that the government of Spain indicated its purpose not to consent to the desired arrangement giving larger powers to our consular officers at Havana and to the captain-general, tending to draw the United States into closer and more direct intercourse with the colony. In March, 1854, came the affair of the *Black Warrior*, to the facts and the law of which critical attention must be given by any one who would correctly realize what the plan of Soulé was, and what difficulties Marcy's wisdom successfully encountered at home and abroad, while Congress was absorbed by the domestic question of slavery.

#### IV.

The *Black Warrior* was a steamer trading between New York and Mobile, but touching at Havana. She had been engaged in that trade eighteen months, and had during that period touched at Havana thirty-six times in order only to land and receive mail bags and passengers. Whenever she had touched at Havana, she had had a cargo on board destined either for Mobile or for New York, which had invariably been

manifested as "ballast." Each time the vessel had been visited by Spanish customs officers, who knew of the cargo. The first time she touched at Havana in the course of this traffic, which was on September 11, 1852, the customs authorities directed the entry and clearance of the cargo of the steamer to be always thereafter made as "ballast." The Spanish authorities also permitted the entry and clearance of the steamer at Havana to be made in advance of her arrival. At the time of her seizure an entry and clearance had been made in the usual form, but the customs officers informed her captain, on arrival, that his manifest was false, because he had bales of cotton on board. Thereupon the representatives of the vessel asked permission to amend the manifest under a Spanish law which allowed twelve hours for such amendment, and requested that no penalty should be inflicted if a true manifest were presented within that time. Notwithstanding this application, the steamer and her cargo were seized by the Cuban officials and proceeded against for forfeiture. The captain and owners abandoned her and her cargo to the customs officials, and forthwith reported the facts to the State Department at Washington.

The occurrence excited great emotion throughout the country, but the administration did not ask for advice, aid or intervention by Congress. The House of Representatives did, however, and without inspiration from the executive, immediately call upon the president for

any information he may have received relative to the detention of the steamer *Black Warrior*, the seizure of her cargo or the imprisonment of her officers, [and] also any information in reference to any other violation of our rights by the Spanish authorities.

It was one of the Houses of Congress, thus, that made an effort to draw the affair within its jurisdiction.

The resolution was immediately answered by the president, who transmitted all the facts in his possession in regard to the seizure of the steamer, and said that, in regard to the

other violations of our rights by the Spanish authorities, of which there have been many in the course of a few years past, all

attempts to obtain redress in which have only led to protracted and fruitless negotiations, the documents are voluminous and will be sent to the House as soon as prepared.

The president repeated what Marcy had said to Soulé, that in Cuba "the offending party is at our doors with large powers for aggression, but none, it is alleged, for reparation"; and added that he had already represented at Madrid the wanton injury done by the detention and seizure of the *Black Warrior* and had demanded immediate indemnity for the injury. In conclusion he said:

In case the measures taken for amicable adjustment of our difficulties with Spain should unfortunately fail, I shall not hesitate to use the authority and means which Congress may grant, to insure the observance of our just rights, to obtain redress for injuries received and to vindicate the honor of our flag. In anticipation of that contingency, which I earnestly hope may not arise, I suggest to Congress the propriety of adopting such provisional measures as the exigency may seem to demand.

To a diplomatist the reason for such a declaration is obvious; but the historians see no ground for it save subserviency to "the slave power."

On a motion made in the House to refer this message from the president to the committee on foreign affairs, Mr. Giddings, of Ohio, denounced the document as an attempt to make use of Cuba to inflame the country in the interest of slave labor. The reason assigned for this denunciation was that the president had not contented himself with a reference to the *Black Warrior*, but had alluded to other instances of aggression by Spain upon our commerce, and other insults to our national flag. This speech of Giddings has been accepted in histories and other formal publications as showing that the president had volunteered information not asked for or suggested by Congress. The fact was suppressed by Giddings, and has been suppressed ever since by those who sympathize with him, that the House had distinctly called upon the president not only for all information in regard to the *Black Warrior*, but also for "any information in reference to any

other violation of our rights by the Spanish authorities." That disturbing speech by Giddings early in 1854, and in the midst of the emotions engendered by the Kansas-Nebraska issue, has been the key-note of a great part of the superficial criticism and condemnation bestowed on Marcy's conduct of the Cuban question. The speech was well adapted to weaken the hand of Marcy, to take the conduct of the critical affair out of the control of the executive, and to alienate the country from the secretary of state.

In foreign affairs the president and Senate, when united, are all-powerful ; but the president, when confronted by an alienated and hostile Senate, even of his own party, is well-nigh powerless. The plan of Douglas to overthrow the "finality" of the compromise of 1850, on which the Democrats won in 1852 and Pierce came to power, could not in the Senate be successfully resisted by the president, whatever he might be able to accomplish in the House. Douglas had shaken beyond remedy the repose of the country conferred by the compromise of 1850. Superficial historians condemn Marcy because, when the attention of the Senate, the House and the country was thus again "securely fixed" on slavery,—its extension into the new territories, or exclusion therefrom,—when free labor and slave labor were making ready for the last terrible onset on the academic issue finally shaped by Buchanan and Douglas after Kansas was a free state, he used his influence to preserve good relations between the Democratic majority in the Senate and the president, to keep the tremendous question of foreign peace or foreign war in his hands, to uphold in security the permanent foreign interests of the nation, and to maintain abroad our dignity and our authority at the highest point, even when civil war was almost in sight at home.

The vague reference made by the president to "provisional measures" was made for a specific purpose, namely, to constrain at Madrid an immediate attention to the affair of the *Black Warrior*, and to keep control in his own hands. But, as interpreted in the speech of Giddings, it was successfully used by the opposition newspapers to affright the country with

predictions of a war against Spain in the sole interest of slave labor. Rumors of dissensions in the cabinet by reason of such a project were industriously put about. Marcy was falsely represented as at issue with the president. The excitement aided the efforts of filibusters in New York, under Cuban control, and in the Southwest under the control of General Quitman. Within a few days, Mr. Slidell, in the interest of the filibusters, moved the Senate to instruct its committee on foreign affairs to inquire whether or not it was expedient to authorize the president to suspend the neutrality laws for twelve months. The motion was intended to embarrass the administration. Slidell assigned as a reason that Spain, urged on by England and with the assent of France, was bent upon the Africanization of Cuba. His motion added to the newspaper excitement. It was said, and the saying has gone into the histories of the day, that the effort to repeal the neutrality laws was made by Slidell on the suggestion of the president and in co-operation with the administration. No statement could have been further from the truth. Slidell had not at any time any other than strained relations with the president. During a large part of the four years of the administration the two were not even on speaking terms. Slidell and Bright were the most conspicuous of a clique of Democratic senators, less than half a dozen in number, who held no personal relations whatever with the president, and with whom Davis, the secretary of war, was not in sympathy. Their names appear in Mr. George Ticknor Curtis's biography of Buchanan as promoters of Buchanan's nomination at Cincinnati.

That the president had no sympathy with the effort of Slidell to encourage filibusters is evident from the tenor of his proclamation against them made during the same month. The power and the duty of the president to prevent the organization and departure of military expeditions for the invasion of Cuba were not, in that proclamation, put solely upon the neutrality law declaring such acts to be high misdemeanors, which law the president was bound by his oath of office to execute; but



he denounced such undertakings as in violation of the treaties between the United States and Spain, and derogatory to the character of the nation. The proclamation also rested in part upon the duty of the president "to hold and maintain the control of the great question of peace or war" to the end that it be decided by Congress, and not lawlessly complicated by the acts of individuals. It was clearly made apparent in that document that the president would, even if the neutrality laws were repealed, arrest and prosecute all filibusters as they had been arrested and prosecuted in the beginning of the government, before any neutrality law had been placed upon the statute book.

It was often said in the newspapers of the day, and those declarations have gone into publications of a more permanent form, that Caleb Cushing, the attorney-general, sympathized with the filibusters at both ends of the Union; but the truth is that the cabinet was perfectly united in condemning all these movements and in endeavoring to stop them. As for Cushing, ordinarily so calm, he was in this matter in a mental and moral condition quite the opposite. To me, and to his intimate friends, his habitual speech when the filibusters were mentioned was filled with those explosive phrases of which he had such full command. He spoke of filibusters as not only abandoned criminals, entering on infamous expeditions of plunder and murder, but as unmitigated and unimaginable idiots, with plans utterly destitute of practicability, reason or common sense. He protested against an appeal by the president to foreign governments for clemency towards the filibusters when arrested and sentenced for punishment. The idea that the United States should send their public armed vessels to bring back these arrested filibusters to the United States was quite intolerable to him. Why treat a pirate, he asked, with demonstrations of consideration rather than any other robber or assassin? He insisted that instead of endeavoring to obtain pardons for men like Walker, Lopez and others, and bring them back to the United States, the

country should allow them to remain in foreign lands, and be thankful "to be rid of such vermin."

When Soulé received in Madrid a copy of the president's Neutrality Proclamation, he wrote to Marcy, on June 24, 1854, in a tone of great despondency. Meanwhile Marcy had pushed with characteristic vigor the reclamations against Spain growing out of the seizure of the *Black Warrior*. On March 17, 1854, he wrote to Soulé that

the outrage is of such a marked character that this government would be justified in demanding immediate satisfaction of the wrong-doers at Havana, and ought in case of refusal to take a redress into its own hands.

Our minister at Madrid was directed to demand of Spain \$300,000 as indemnity for injuries inflicted upon the owners of the steamer and her cargo, and that Spain disavow the acts of her officials in Cuba who perpetrated the wrong, or assume the responsibility of upholding their conduct. In order to hasten the Spanish deliberations, a special messenger was sent to Madrid with the demand, who was told to remain a reasonable time in order to bring back to Washington a reply.

In bringing the note to the attention of the Spanish government Soulé insisted, on his own responsibility, that a failure to comply within forty-eight hours with the demands of the president would be considered as equivalent to a declaration that Spain had decided to uphold the conduct of its officers. Nothing had been said in his instructions about hours. Spain properly replied that she must have time to make inquiries at Cuba, and that she could not incriminate without a hearing the high functionaries in that island in whom Spain placed its confidence. The messenger returned to Washington with this reply. Six days later, April 18, 1854, the Spanish government said to Soulé that it could not "agree that there has been an outrage, nor much less premeditation" committed by Spain in the affair of the *Black Warrior*. On May 7, 1854, the Spanish minister of foreign affairs at Madrid wrote again to Soulé to say that he had received from Cuba a complete statement of the facts in the case of the *Black Warrior*; that

the detention was not a premeditated insult to the American flag, nor any insult at all; that it was a mere application of ordinary fiscal law; that there was no occasion for the payment of the indemnity claimed, since the property had been returned to its owner and the fine had, on their own entreaty, been remitted; and that it was not to be expected that the government at Washington would now demand a pecuniary indemnity as satisfaction for an insult to its flag.<sup>1</sup> The reply concluded by an allusion to the

unfriendly haste with which the first magistrate of the Republic has censured Spain on representations naturally prompted by passion on the part of those who believed themselves insulted by the proceedings of a high functionary of Spain in Cuba.

Within a few days after the reply by the government at Madrid had been received by Marcy, he wrote his note of June 22, 1854, which, in many important aspects, is one of the ablest and most convincing documents that came from him as secretary of state. Although the owners of the steamer and the cargo had come to terms with the captain-general of Cuba, and had accepted from him what was satisfactory to them, Marcy presented another aspect of the occurrence which demanded the serious attention of Spain. The inconvenience of insisting that a detention and arrest of a merchant vessel by a government, for an alleged violation of its custom laws, is necessarily an insult to the government whose flag the vessel bears, was adroitly put aside in order to make the affair of the *Black Warrior* an occasion for exhibiting the conduct of Cuban officials. In a note dated two days later, and marked "confidential," Marcy said to Soulé that the president "has no objection, but on the contrary desires that Her Catholic Majesty's government should know in what light he views its reply to our claim for reparation," and, he adds, "you are, therefore, at liberty to read the accompanying despatch to the Spanish minister of foreign relations, and

<sup>1</sup> The owners of the vessel and her cargo had, unknown to the State Department, "come to terms" with the Cuban authorities.

may furnish him with a copy if he desires it." Soulé did not act on this permission. He had other plans.

At about the time that this vigorous presentation by Marcy of the case of the *Black Warrior* arrived at Madrid, a change of ministry took place, and the captain-general of Cuba, together with the officer next in authority who had to do with the arrest of the *Black Warrior*, was removed from office. Concha was appointed to be the new captain-general. Soulé thereupon wrote to Marcy that the most skeptical must then be convinced

of the utter absence of all disposition on the part of this [Madrid] government to yield anything to our demands; that the position taken by the last cabinet will in the main be maintained by the present cabinet; that our endurance under the inflictions so quietly borne in the case of the *Black Warrior* has encouraged Spain in the belief that she has little to apprehend at our hands for the island of Cuba;

and that he had informed the new minister of foreign affairs that the removal of the captain-general and the appointment of his successor seemed a sort of defiance thrown at the United States. But yet Soulé withheld from the government at Madrid the text of Marcy's convincing argument of June. A few days later (August 30) Soulé wrote to Marcy that his health had become so much impaired that he must retire to a "watering place"; that he left that evening for the frontier, where he would wait fresh instructions to guide his future movements; and that, in the meantime, he had, without orders or permission from Washington, taken leave of absence from the queen and from the minister of foreign relations. That was in the interest of his own plan. In the same note he informed Marcy that the Spanish minister of foreign affairs

exhibited the most restless anxiety to get a word of writing from me on the vexed subject [*Black Warrior*]. I deemed it judicious not to indulge him in this. I abstained therefore from affording him the chance so earnestly sought to secure in the communication all the

unanswerable arguments with which you had furnished him (me) on the merits of the case, as that could be done at any time hereafter.

That was in disregard of instructions. The Spanish minister said to Soulé that unless he could have something "in writing," he would have nothing to act upon.

Not hearing anything further about his despatch of June 22, Marcy, finally quite out of patience, wrote on October 27 to Soulé that it was the president's

expectation that the government of Spain should be apprised of the unsatisfactory character of its reply to our demands in that case, [the *Black Warrior*] and of the distinct grounds on which the claim to indemnity and satisfaction rested.

Soulé replied to Marcy, November 10, that he (Soulé) had felt impelled to "keep back" the despatch, but that if Marcy should still think the paper ought to be presented, he would "comply most gladly with his request." Marcy quickly, and for the third time, told him to send the note of June 22 to the Spanish government, because "we having been asked for our views in writing, a refusal to comply would place us in a false position." Finally, about the first of December, Marcy's note, written in the middle of the previous June, was placed in the hands of the Spanish government, and Spain yielded to its unanswerable logic.

Mr. Rhodes, one of the latest of the historians of the United States, says in his comments on this episode in our diplomacy :

It is plain that the president and secretary of state should have decided upon the transfer of Soulé to some other diplomatic post. Soulé was an accomplished and patriotic gentleman, who deserved to be treated with consideration.

It was then, and is now, a defect of our public service that there is in it no diplomatic career as there is in British diplomacy and in our army and navy. There could not be a "transfer of Soulé to some other diplomatic post," unless he resigned or was removed from that at Madrid, and was then nominated to the Senate for another mission where a vacancy existed.

A demand by the president for his resignation or his removal would have precipitated the whole Cuban issue into the Senate, where the repeal of the Missouri Compromise was raging, and would have given to Slidell, Benjamin, Bright and other enemies of the administration, which enemies then made up the "Southern propaganda," the very opportunity they sought, namely, an uproar over Cuba. The domestic phase of the slavery convulsion was of itself enough for Marcy to confront. The administration was then bending every energy to keep the ship of state on an even keel so far as concerned foreign affairs. The situation was critical at every point — Canada, Central America, Cuba, all round to Smyrna. Davis, Cushing and all the cabinet were loyal to the president and to Marcy. The effort of the executive in those days was to keep its peace with the Senate, in order to keep the peace with foreign powers, even though dissensions raged at home.

As soon as Marcy had become fully aware of the suppression of his *Black Warrior* note, and of the light in which Soulé had represented the course pursued by the Spanish cabinet in the *Black Warrior* affair, the president decided to re-enforce the mission at Madrid by two of our most distinguished citizens, in order to manifest in the most emphatic manner the deep solicitude which he felt in regard to the relations between Washington and Madrid, and at the same time to put needed restraint on Soulé, without aiding mischief-makers in Congress. Soulé was informed of that purpose. On the same day on which he wrote to Marcy deploring the president's Neutrality Proclamation, he complained of the purpose to send commissioners to Madrid, the news of which had somehow leaked out and had found its way into the Madrid newspapers. He regarded an association of colleagues with himself at Madrid as an act of condescension to Spain quite inadmissible — as sacrificing him "to the vindictive exigencies of a haughty *Camarilla* for having offended its pride while acting by the express orders, and under the commission, of my government."

It will be remembered that on March 15, the president, in reply to the resolution of the House, suggested "provisional

measures" by Congress to meet any exigency that might arise in the recess affecting the relations between Washington and Madrid. The Senate, on the second of August, requested the president for information as to whether anything had arisen since the middle of March which, "in his opinion may dispense with the suggestions" previously made. The president replied that our relations with Spain had not assumed, since March, a more satisfactory condition. Spain had met the formal demand for immediate reparation in the case of the *Black Warrior* by a justification of the local authorities of Cuba. Meanwhile, preparations were on foot by individuals in the United States to make a descent upon the island of Cuba with a view to wrest that colony from Spain. The president informed the Senate that he had issued a proclamation warning all persons not to participate in such enterprises, and said, in conclusion, that "nothing has arisen, since the date of my former message, to dispense with the suggestions therein contained touching the propriety of provisional measures by Congress." A few days thereafter, the foreign affairs committee of the Senate made a report setting forth, among other things, that the hope entertained by the president and by Congress of an amicable adjustment of the pending difficulties with Spain before the termination of the present session had not been realized, but yet the interval between the adjournment of Congress and its reassembling was to be so brief that the committee, under the circumstances, deemed it advisable to leave the conduct of the affair entirely with the executive. That decision was acceptable to the administration, and was by the foreign affairs committee intended so to be.

## V.

Meanwhile, though nothing had been accomplished in the *Black Warrior* case, rumors were current which could not be disregarded, of the purpose of Spain and her allies to Africanize Cuba; the efforts of the filibusters in the Southwest had advanced so far that Quitman had been arrested by the government and placed under bonds to obey the neutrality

law; and relations at Madrid between the American minister and the Spanish government had become more strained. In view of this situation, a few days after the adjournment of Congress the administration decided to give up the project of a special commission to be sent to Madrid, but to set on foot a full and free interchange of views between our ministers at London, Paris and Madrid, "in order to secure a concurrence in reference to the general object." The purpose of Marcy was thereby to obtain more definite information in regard to the purposes of the English and French governments in respect to Cuba. Buchanan, it has since appeared, was even at that early day intriguing with the backers of Soulé in Congress. He had in a large degree the confidence of the country, and his ideas, it was thought, would be valuable. Soulé had left Madrid, and was sojourning elsewhere for the benefit of his health.

The three ministers, Buchanan, Mason and Soulé, met at Ostend on October 9, 1854, removing three days afterward to Aix-la-Chapelle, where their deliberations were continued. Soulé informed Marcy that the "most cordial harmony" marked the progress of their labors. On October 18 the ministers made their report to the Department of State. A great part of it was occupied with an exhibition of the reasons why the United States ought to purchase Cuba, and why Spain ought to consent to the sale. There was nothing disclosed in that relation which Marcy did not already know and appreciate. His chief purpose in directing the ministers to a conference had been to ascertain the purposes of England and France, and whether the two intended to Africanize the island; but the ministers, instead of presenting facts, put aside the inquiry with this pompous sentence:

We should, however, be recreant to our duty, be unworthy of our gallant forefathers, and commit base treason against our posterity, should we permit Cuba to be Africanized, and become a second St. Domingo, with all its attendant horrors to the white race, and suffer the flames to extend to our own neighboring shores, seriously to endanger or actually to consume the fair fabric of our nation.

Only one important statement was made by the ministers. It was this :



But if Spain, dead to the voice of her own interests and actuated by stubborn pride and a false sense of honor, should refuse to sell Cuba to the United States, then the question will arise: What ought to be the course of the American government under such circumstances? . . . Our past history forbids that we should acquire the island of Cuba without the consent of Spain, unless justified by the great law of self-preservation. We must, in any event, preserve our own conscious rectitude and our own self-respect. Whilst pursuing this course, we can afford to disregard the censures of the world, to which we have been so often and so unjustly exposed. After we shall offer Spain a price for Cuba far beyond its present value, and this shall have been refused, it will then be time to consider the question: Does Cuba, in the possession of Spain, seriously endanger the internal peace of our whole nation? Should this question be answered in the affirmative, then by every law, human and divine, we shall be justified in wresting it from Spain, if we possess the power; and this upon the very same principle that would justify an individual in tearing down the burning house of his neighbor, if there were no other means of preventing the flames from destroying his own home. Under such circumstances we ought neither to count the cost, nor regard the odds which Spain might enlist against us. We forbear to enter into the question whether the present condition of the island would justify such a measure.

A consideration of the "present condition of the island" was the precise reason for assembling the ministers for deliberation.

The whole document filled the president and all the members of his cabinet with amazement. Nobody could understand the motives of Buchanan in signing it. To allow the document to stand, without a reply expressing the president's opinions, was impracticable. The situation was inconvenient in many respects—personal as well as political. On November 13, 1854, however, the result of the conference having been carefully considered, it was set forth in reply by Marcy that, in the opinion of the president, the purchase of Cuba was the measure to be relied upon as placing the relations of the two countries on the sure basis of enduring friendship. Spain had been informed of the desire by the United States to obtain the cession of the island, and Soulé was again directed, when he

returned to Madrid, to continue the negotiation for a purchase, if acceptable at Madrid.

Having said that, Marcy proceeded to comment upon the result of the Ostend Conference as set forth by those who took part in it. He told Soulé that the report advised the president to present to Spain "the alternative of cession or seizure of the island." He said that the president concurred in the opinion that it would be time enough to consider the question whether or not Cuba in the possession of Spain seriously endangered our nation, when we should have offered Spain a price for Cuba far beyond its present value, and that should have been refused. "But," added Marcy,

to conclude that on the rejection of a proposition to cede, seizure should ensue, would be to assume that self-preservation necessitates the acquisition of Cuba by the United States, that Spain has refused and will persist in refusing our reclamations for injuries and wrongs inflicted, and that she will make no arrangements for our future security against the recurrence of similar injuries and wrongs.

He then declared that

however much we might regret the want of success in our efforts to obtain the cession of it, that failure would not, without material change in the condition of the island, involve imminent peril to the existence of our government.

When the note written by Marcy to Soulé had been received by him at Madrid, he immediately replied that it left him

no alternative but that of continuing to linger here in languid impotence, or of surrendering a trust which, with the difficulties thrown in the way of its execution, I would strive in vain to discharge either to the satisfaction of the government or to my own credit. You will not be surprised at the course which a sense of dignity has compelled me to adopt.

That course was to tender his resignation. He arrived in New York in March, 1855, and a reception was tendered to him by Goicouria, the chief of the Cuban filibusters in that city.

## VI.

In order better to understand the situation at the time, it will be useful to take note here of the divergent forces

in the United States operating upon the Cuban question. There was on the one hand a strong sentiment in favor of acquiring the island, though for widely varying reasons. Many business men believed that the acquisition would increase our commercial wealth; many military men believed that it would enhance our military strength. Some who wished to destroy slavery everywhere desired Cuba as a means to that end, though the Abolitionists as a rule were hostile to acquisition; many who wished to perpetuate slavery would acquire the island with that purpose in view. There were those who hated Spain as the home of the inquisition and of intolerance, and would humiliate Spain by wresting Cuba from her. There were those, moreover, who would make the island independent and self-governing, like Mexico. And there were those who sought public disturbance and even war, and who promoted filibusterism as likely to further what they sought. The filibusters, hostile either to a purchase of the island by the government or to an acquisition by open war, were endeavoring to promote a Cuban revolt against Spain, and wished the government at Washington not only to abstain from preventing expeditions from our country to aid Cubans, but to encourage Americans to go to the aid of Cubans struggling to secure their independence of Spain. The filibusters insisted that when Cuba had become independent there would be time enough to think of annexing the island to the United States, which insistence implied that it was better for our government to purchase the island from filibusters than from Spain. But on the other hand, there was a large body of opinion, represented at that time by the *Washington Union*, a newspaper at the seat of the federal government, which insisted that if Spain refused to sell Cuba at a fair price, then our government should immediately abate and remove the nuisance of Spanish dominion in the island. Such an opinion was expressed by the *Union* in an elaborate article of July 26, 1854, at a time when Forney, the unfailing friend of Buchanan, was in control of that journal.<sup>1</sup> It should also be borne in mind that,

<sup>1</sup> Forney's *Anecdotes of Public Men* is much relied on by partisan historians of Marcy's work.

between the middle of August and the beginning of December, 1854, Congress was not in session, and therefore neither the details nor the substance of what had passed between Washington and Madrid could, in an orderly way, be made public. Not till March of the next year (1855) was the report of the Ostend Conference and the astonishing advice offered by our three ministers spread before the country.

When Congress adjourned in August, 1854, not only was the *Black Warrior* affair still unsettled, but an assault by a Spanish cruiser upon an American vessel, the *Eldorado*, off the coast of Cuba, indicated that Spain, instead of retreating, was advancing in her pretensions of right to overhaul our vessels on the high seas. Affairs in Cuba seemed to be growing worse for our interests rather than better. There were alarming indications of a European conspiracy against us. In consideration of all these circumstances, the president, about the time of Soulé's reception by the New York filibusters, gave directions that as many of our ships of war as could be made available should be ordered to rendezvous near Havana. The assembling, preparation and destination of these vessels could not be kept secret, and created much newspaper commotion. Even the most cautious and conservative of the journalists saw, or said they saw, war with Spain close at hand, and in the interest of "the slave power." The excitement was fed and intensified by the conduct of *The Union*, which persistently encouraged the war feeling, although it had no more knowledge of the purposes of the president than had any other newspaper in the country. Marcy was not complaisant to newspaper reporters, and so they preferred to treat *The Union* as an organ and as "speaking by authority," although they knew that Forney, then devoted to the candidacy of Buchanan in 1856, was not only an editor but a part owner of *The Union*, and that he sympathized with the views of the Ostend Manifesto, which Marcy had condemned. The hubbub went on increasing day by day. One morning an irreconcilable contention was represented as existing in the cabinet; the next morning Marcy and Guthrie were described as in collision with Davis

and Cushing over war with Spain; and the next it was said that the president had taken affairs into his own hands and had intimated to all the members of the cabinet that they could go about their own business. The newspapers circulated pure fiction. At the bottom of all were the editorials of *The Union*. Finally the excitement became so great—the administration of course refusing to disclose to Spain the instructions given to our war vessels then ready to depart—that *The Union* became alarmed and on April 20, 1855, formally denied that it was “an organ.” It said:

The administration we believe has never inclined to have an organ. So far as its domestic policy is concerned, it speaks through its acts; and in relation to foreign diplomacy it tells, upon the call of the representatives of the people (Congress), what it has done. We take, just as every other free press may take, its avowed principles and its performance. . . . Organism we have neither sought, nor held.

It then went on to declare, in palpable contradiction of previous intimations, that “the president has neither contemplated nor taken any steps in the matter referred to [Cuba] in which he has not had the cordial approval of every member of his cabinet.”

After that declaration by *The Union*, which was not suggested or inspired by the administration, or by any member of it, the rude bluster and belligerent antics of the other newspapers quickly ceased.

On June 5, 1855, and when the newspaper commotion had subsided, the president gave to the country the text of the instructions he had ordered to be given to McCauley, appointed to the command of the home squadron, consisting of nine vessels. Attention was therein first called

to the conduct of the Spanish frigate *Ferrolana* in firing at the United States mail steamer *Eldorado* and subjecting that vessel to delay, visitation and search, about eight miles from Cape San Antonio,—an occurrence which, if approved by the Spanish authorities, is likely to disturb the friendly relations between the two governments, and a course of proceeding which, if persisted in, cannot but provoke collision.

Then McCauley was told that the United States would not tolerate the visitation or search of their vessels on the high seas, and was instructed

that if any officer in command of a ship of war be present when an outrage of the character heretofore mentioned is perpetrated on a vessel rightfully bearing our flag, he will promptly interpose, relieve the arrested American ship, prevent the exercise of the assumed right of visitation or search and retaliate interference by force.

The United States, continued the orders, seek no collision with Spain, but all officers of our navy are expected scrupulously to observe the law of nations and uniformly to extend all courtesy and respect to the flags of other powers.

Your instructions are confined to cases arising on the high seas because, as at present advised, the offensive acts which have been committed are of that character.

It was added that should offensive acts to American citizens or their property occur within the proper territorial jurisdiction of Cuba, and not on the high seas, such facts should be immediately reported to the secretary of the navy, whose further instructions were to be awaited, "unless your prompt interposition should become necessary for the preservation of the lives and property of the citizens of the United States."

The fleet proceeded to its destination.

We have seen that after Congress had adjourned, in August, 1854, Soulé was constrained by Marcy to place his communication of June 22, 1854, in regard to the *Black Warrior*, in the hands of the Spanish ministry. The effect was that, on February 10, 1855, the minister of foreign affairs announced to the Cortes that the government of Her Majesty

has directed all the questions now pending with the government of the United States to be fully and satisfactorily gone over anew, and has laid down as the principle on which those investigations are to be conducted, not to endeavor to seek arguments against the claims of the United States, but a fair effort to ascertain what is just, in order that when ascertained it may be conceded, and conceded substantially and freely, as becomes the people which this government

directs. This government, I repeat, has resolved of its own accord to yield whatever is just and to yield without pressure. It is confident of meeting the same sentiment on the part of the government of the United States.

The affair of the *Black Warrior* was adjusted to the perfect satisfaction of the president, and the adjustment was accompanied by an offer even to dismiss from office and punish all the subordinates at Havana who had been concerned therein. In the matter of the *Eldorado* a proper atonement was made. These results naturally exasperated the war party and all the enemies or rivals of Marcy; but when it was reported that McCauley, on his arrival at Havana, had, after a long and friendly interview with Concha, the captain-general, reached a satisfactory understanding with him; that the war vessels of the two countries were saluting and exchanging social courtesies in a most vigorous manner; and that McCauley, with his officers, was assisting the captain-general in military and naval reviews on the island, the "slave-power" war bubble of the newspapers totally collapsed.

The filibusters throughout the country came to grief at the same time. On the 29th of April, at a meeting of the Cuban Junta at New Orleans, Quitman tendered his resignation as commander-in-chief of the expedition which had been so long organized against Cuba, and all the other American officers who held commissions in this Quitman army resigned. *The National Intelligencer*, which, as a powerful Whig journal, had innocently done much to inflame the country against the president and the secretary of state, declared May 11, 1855 :

Our executive government not only showed no favor to the Ostend scheme of acquisition, but still less to filibustering designs on the island, which it formally denounced, and menaced with all the penalties of the law.

Soon after that, the text of all the correspondence and instructions since July, 1853, relating to Cuba, was made public, and the country saw that there had been unanimity in the cabinet, and that Marcy, with a strong and steady hand on the helm, had not permitted the ship of state to fall off by a

single point from the course laid down by the president in the orders to Soulé of the summer of 1853. The good understanding between Washington and Madrid in regard to Cuba thus effected remained substantially undisturbed during the next succeeding dozen years, and until, in 1868, a revolution in Spain and other causes lighted again the fires of insurrection in the island, and stimulated the organization of filibustering expeditions in the United States to promote that insurrection.

## VII.

A great part of the difficulties with which Marcy had to contend, and which put a strain on his great faculties, came from the insubordination of Soulé as a diplomatic agent. He was graceful, eloquent, charming and persuasive, but he failed as a diplomatist because he had a plan and policy of his own, and did not accept the relation to his chief which a diplomatist should occupy. Prince Bismarck summed the matter up when he said: "My ambassadors must wheel about at command like non-commissioned officers, and without knowing why." Had Soulé given his faculties to the study of the wishes, ideas and instructions of his chief, and had he subordinated his own views to these, his mission might have been a brilliant success, instead of a lamentable failure. A diplomatic agent is not the colleague, but the servant of his chief; but having been a senator and once a controlling man in affairs at home, Soulé could not consent to be a subordinate even of a chief so wise and great as Marcy.

This Cuban episode in our foreign affairs was not the first occasion in which the administration had been embarrassed by popular belief in a relation between itself and a newspaper which did not in fact exist. In Pierce's time there was no dignified and effective way provided, short of a proclamation, by which the president could communicate to the country what might be of the highest public importance during the recess of Congress. "Interviewing" had not then been invented, and its uses, as well as its abuses, were unknown. The



Associated Press was not perfected as now. The administration might select a newspaper as the medium of its "semi-official" and "inspired" declarations, but under the penalty either of having the genuineness of these declarations discredited by the newspapers not so favored, or else of having attributed to its inspiration whatever the conductor of the selected journal might take into his head to say on his own account. In the case of *The Union* we have seen that the administration incurred all the disadvantages of the reputation of keeping "an organ," without gaining the correlative benefits. The desirableness of a channel by which the public can be brought to accept what rulers wish to say, and that without making the rulers officially responsible, at home or abroad, is very evident. Equally evident are the disadvantages of such a relation. The problem of realizing the former and escaping the latter has engaged the attention of the first of living statesmen. Prince Bismarck has told how very early in his diplomatic career he became a working journalist in the interest of Prussia. The memory of his manifestations of a "semi-official" activity in the press has been recently revived in Berlin. His exposition of the subject in a speech of February 9, 1876, described, in his blunt and humorous fashion, the troubles of a minister who can neither do with the newspapers, nor do without them.

It cannot be denied [he said] that every government, particularly that of a great country, desires the support of the press in its foreign as well as its home policy. Nothing, therefore, is more natural than that governments should keep a certain amount of space at their disposal in journals well affected to them, wherein to put forward views which they do not exactly want to publish in their official gazette. Formerly the *Norddeutsche Allgemeine Zeitung* was rendered available to the Prussian government for this purpose by its proprietors, acting upon their convictions and not asking for any remuneration. The government took advantage of their offer and the paper profited largely by its official connection. But what was the consequence? Most people believed that every article appearing in that paper was either written by the prime minister, or read over by him before publication, so that he could be held responsible for

every word of its text ; and it was this which compelled me to forego the pleasure of promulgating my opinions extra-officially in the press. . . . Serious inconveniences, however, accrue from attributing an official character to announcements which really possess none. . . . There is no conceivable piece of stupidity which has not been imputed to me in this manner by the simple word "official" ; wherefore I take this opportunity of positively declaring that the Foreign Office does not own an official paper, and does not impart official communications to any paper. I admit the inconvenience of being unable to make known my views to public opinion otherwise than through the *Staatsanzeiger*, or sometimes through a recognized official organ, the *Provinzial Korrespondenz* ; but thus, at least, I am sure that no cuckoo's eggs will be laid in my nest, and that I can only be held answerable for what I myself (or one of my colleagues) have said.

That is a vigorous statement of difficulties similar to those under which Marcy labored. It is bad enough for a living administration to be by newspapers persistently misrepresented in respect to its conduct of foreign affairs, but it is still worse when, as in the case of Marcy, historians nearly forty years after his death confess that, without any adequate attempt at verification, the irresponsible and malevolent statements of such newspapers are used to defame the work of one of the greatest of the illustrious men who have held the portfolio of the Department of State.

SIDNEY WEBSTER.

## THE DIPLOMATIC CORRESPONDENCE OF THE AMERICAN REVOLUTION.

**B**Y a joint resolution approved August 13, 1888, Congress authorized the printing of a new edition of the diplomatic correspondence of the American Revolution, with historical and legal notes by Francis Wharton. This action on the part of Congress was induced by the disclosure of defects in the text of the correspondence as published by Jared Sparks, as well as by the discovery of important documents which were unknown to Mr. Sparks. The editor of the new edition died soon after it was ready for the press, and before much progress had been made in the printing ; and authority was conferred on his literary executor to continue the work of publication. This work is now almost finished. All that it lacks of completion is the printing of a subject index.

It will be time to discuss the merits of the new edition when it is in the hands of the public. The object of the present article is merely to point out the defects in the text of Sparks, as they have been revealed by an examination of the whole correspondence. In this way it is hoped that something may be contributed to the elucidation of a question that has been much controverted even to the present day.

In attempting to pronounce a judgment on the text of a correspondence published more than two generations ago, something must be allowed for the change that has taken place in our views of editorial duty. The standard of fidelity prescribed by Cromwell for the young Lely, who was ordered to paint the Protector as he was, with all his scars and wrinkles, has not always been accepted by those who have sought to portray the character and conduct of public men by their letters. On the contrary it has been thought to be proper, if not a matter of duty, to correct and alter correspondence so as to make it conform to the canons of taste prevalent at the

time and place of publication, and to omit any passages that may contain opinions which time has failed to justify, or which it is probable that the author might, if he were alive, desire to modify or suppress. Modern criticism condemns this view of editorial duty ; and it is not strange that in the revolution recent editors have sometimes gone too far. Among men who write at all, there are few, if any, who do not at times, when under the sway of impulse or misconception, utter sentiments in the secrecy of correspondence which it would be unjust to publish. Fidelity to truth does not require us to pander to a low and prurient curiosity, by publishing private writings which shock our sense of propriety or of justice.

But in regard to correspondence of an official character, the limits within which alterations and omissions are permissible must be very narrow. The great mass of the diplomatic correspondence of the American Revolution is composed of official letters, written by one official person to another, on subjects of public concern. In such case the writer must be held responsible for what he utters, both as to substance and as to form. To alter the form is to deprive us of one means of forming an estimate of the writer ; to destroy the substance is to deceive us as to historical facts. That an editor has done either the one thing or the other in the publication of official historical documents, must greatly detract from the value of his work and impair confidence in it. It is true that in the contemporary publication of diplomatic correspondence it is usual to suppress such passages as might be detrimental to the public interest. But the rule in such cases is to print the imperfect text as an "extract," or by the use of appropriate signs to indicate that there are omissions.

The alterations in the text of the diplomatic correspondence as published by Sparks may be classified as follows:

1. Changes in the style, for rhetorical or grammatical effect.
2. The omission of whatever seemed to be undignified or indelicate.
3. The suppression of passages exhibiting the antagonisms of our Revolutionary leaders and the existence among them

of personal motives and antipathies, or suggesting doubts as to their patriotic zeal.

4. The elimination of whatever might tend to offend the susceptibilities of the British people.

# I.

The changes in style are numerous and run all through the correspondence. Their character may be shown by a few illustrations.

In the letters of Silas Deane, from France, we find "Employ must be found," changed to "Employment must be found;" "to appear in a proper character and defend," is printed "to appear in a proper character, and put in a defence;" "long-accustomed form and etiquette," is made to read "long-established form and etiquette;" "the uncertainty of my situation will not permit my engaging for anything certain to one who might deserve confidence," reads: "the uncertainty of my situation will not permit my making engagements to one who might deserve confidence." Where Deane expresses fear lest he may have "omitted something," Sparks says: "omitted some things deserving attention." Deane says: "The United Colonies want about three millions value of manufactures annually (it has heretofore been rising of that) from Europe." In Sparks the parenthetical clause is: "it has heretofore been a little more." Where Deane speaks of giving French manufactures "the advantage of the first lead in American commerce," Sparks says: "the advantage of anticipating others in American commerce." In a letter of Deane's to the Committee of Secret Correspondence, of December 1, 1776, some of the changes made in the style are as follows: In the original it is declared that the bills issued by Congress must be "paid off by taxes and new emissions made;" Sparks says: "paid off by taxes and new emissions." "This is obvious, that," becomes "It is obvious that." "I have in a former letter wrote," is changed to: "I have in a former letter written." This last alteration is frequently made, since Deane habitually said "have wrote." A subordinate clause, — "with

many other obvious reasons," is converted into the beginning of a sentence: "There are other obvious reasons." The expression "prevented the loan and fell the stock," is changed to "prevented the loan and lowered the stock." Deane also says: "The credit of Great Britain, though it has not fell," while Sparks prints: "has not fallen."

In the letters of John Adams constant modifications of style have been made. Thus in a note of Adams to Vergennes, of July 1, 1780, we may point out, among others, the following:

## ADAMS.

The advantages which Spain has gained in West Florida, and particularly of late at Mobile, and the probability that they will succeed in acquiring both the Floridas . . . They (the English) will see every possession they have beyond their island lopped off . . .

I presume not to know. . . .

Want of knowledge or attention.

While they have the superiority of the sea.

Without a superiority of naval force, New York will never be taken.

If the last year the enemy had marched . . .

This it was induced them.

The English are in possession of Canada . . . in which there are a great number of posts.

It is force and fear and policy.

## SPARKS.

The advantages which Spain has gained in West Florida, and particularly of late at Mobile, and the probability that she will succeed in gaining both the Floridas . . . They (the English) will see every possession they have beyond the island lopped off . . .

I pretend not to know. . . .

Want of knowledge and attention.

While they have the superiority at sea.

Without a superiority of naval force, clear and indisputable, New York will never be taken.

If in the last year the British army had marched . . .

This it was that induced them.

The English are in possession of Canada . . . in which there is a great number of ports.

It is force, fear and policy.

It would be very easy to reduce them in this way to such misery.

It would be very easy in this way to reduce them to such misery.

In a letter of Adams to the president of Congress, dated at Amsterdam, September 24, 1780, we find the following changes:

ADAMS.

Since the receipt of the despatches by the Hon. Mr. Searle, I have been uninterruptedly employed in attempting to carry into execution the designs of Congress.

The first inquiry which arose was whether. . . .

The same reasons determined me to communicate nothing to the regency of Amsterdam or any other branch of government, and to proceed to seek a loan upon the foundation of private credit.

This business must be conducted with so much secrecy and caution, and I meet with so many difficulties for want of language, the gentlemen I have to do with not understanding English, and not being very familiar with French, that it goes slower than I could wish.

Many alterations of style were made in the letters of Carmichael, but it is unnecessary here to describe them. This

SPARKS.

Since the receipt of the despatches from Congress, brought by Mr. Searle, I have been uninterruptedly employed in attempting to carry into execution their designs.

The first inquiry which arose in my own mind was whether. . . .

I then inquired whether it would be proper to communicate anything to the regency of Amsterdam, or any other branch of government whatsoever; and I was advised against it, and to proceed to effect a loan upon the simple foundation of private credit.

This business must all be settled with so much secrecy and caution, and I am under so many difficulties, not understanding the Dutch language, and the gentlemen I have to do with not being much more expert in French than I am myself, and not understanding English at all, that the business goes on slower than I could wish.

branch of our investigations may be concluded by setting forth the changes made in the letter in which Livingston resigned the office of Secretary of Foreign Affairs:

## LIVINGSTON.

Having lately learned. . . .

Distinguished marks of confidence which I have experienced repeatedly, as well from Congress as from its respective members. . . .

The Reverend Mr. Tetard . . . finds himself reduced, at an advanced age, to want the necessities of life, the enemy having destroyed his house, laid waste his farm, carried off his slaves, and plundered him of his property. For these facts I take the liberty to refer Congress to his memorial, presented to them in 1778.

As it is probable, sir, that Congress, in making a new appointment, would wish to adapt the salary to the necessary expense of the department, of which they have heretofore had no means to be fully informed, I owe it, as well to them as to my successor, to assure them that with the utmost economy which my situation would admit of, I have been compelled to expend something more than three thousand dollars beyond the allowance of Congress, exclusive of carriages, horses, and household furniture, all of which I brought with me.

## SPARKS.

Having lately been informed. . .

Distinguished marks of confidence which they (Congress) have repeatedly shown me in the execution of my trust. . . .

The Reverend Mr. Tetard . . . finds himself reduced, at an advanced age, to absolute ruin by the enemy and our own army, both having contributed to lay waste his farm, destroy his buildings, and pillage his property. For these facts I take the liberty to refer Congress to his memorial.

As Congress, in making a new appointment, will probably wish to adapt the salary to the necessary expenses of the department, of which they have heretofore had no opportunity to be fully informed, it is a duty I owe to them as well as to my successor, to assure them that my expenses, exclusive of purchase and wear, carriages, horses, and household furniture, have exceeded my allowance from Congress upwards of three thousand dollars.



## II.

The character of our Revolutionary patriots renders it superfluous to say that the omissions made in their letters on the score of dignity or of delicacy are far less numerous than the changes of style. Nor are they of great importance. Nevertheless, it does not seriously jar us now and then to find a lapse into pleasantry, a slight abatement of reserve or a little plainness of speech. We are no longer blinded by the "dignity of history." It does not diminish our respect for John Adams to learn that he once suggested that the Dutch might become "undutchified." In Sparks the passage is omitted. Referring to the imprisonment of Henry Laurens in the Tower of London, Adams said: "He is ill of a lax, much emaciated, and very invective against the authors of his ill-usage." In Sparks this sentence runs: "He is sick with a cholera, much emaciated, and very much incensed" *etc.*

One of the notable characteristics of John Adams was the frankness with which he committed his thoughts to writing—a characteristic that has been perpetuated in his descendants. When he returned to Paris to participate in the peace negotiations, fresh from his diplomatic triumphs in the Netherlands, he not unnaturally felt a sense of elation, and he took no pains to conceal it. In his journal of the peace negotiations we find, under the date of November 10, 1782, the following paragraph:

The compliments that have been made me since my arrival in France, upon my success in Holland, would be considered as a curiosity if committed to writing. "Je vous félicite sur votre succès," is common to all. One adds, "Monsieur, ma foi, vous avez réussi bien merveilleusement. Vous avez fait reconnoître votre indépendance; vous avez fait un traité, et vous avez procuré de l'argent. Voilà un succès parfait." Another says, "Vous avez fait des merveilles en Hollande: vous avez culbuté le Stathouder et le parti Anglois; vous avez donné bien du mouvement, vous avez remué tout le monde." Another says, "Monsieur, vous êtes le Washington de la négociation." This is the finishing stroke. It is impossible to exceed this.

This paragraph was omitted by Sparks, but it was subsequently published in Adams' complete works.<sup>1</sup>

Under the expurgatory pen passages disappear from the letters of Dumas, the faithful, learned and neglected Switzer, who represented the United States at The Hague, as well as from the letters of Carmichael, Deane, Franklin and the Lees.

Dumas with high enthusiasm exclaims: "I had addressed myself to the court of France with an exalted mind and fired with philanthropy"; he is made to whisper: "with a deep interest in your concerns."

Carmichael, exhilarated by his return to his native land, off Reedy Island addressed the president of Congress as follows:

How strangely am I rusticated on the wing to the regions of politesse, and yet forget to mention the ladies. This you will naturally do for me, or palliate this sin of omission with many others of, sir, your obedient servant.

The sin was perpetuated by the suppression of this apology.

Arthur Lee, writing from Paris, says: "Spain is more reserved, *her minister here an old woman.*" In another place he declares: "By such arts they (the British ministry) endeavor to *cover their nakedness and* sustain their desperate cause." In each of these sentences the words here italicized are omitted.

Deane, who speaks of a "ticklish situation," is made to say "critical situation"; and when he recommends a suggestion to Congress "for digesting," he is represented as proposing it "for consideration." His offences, however, are not all so cursory. In a letter to Jay, dated at Paris, December 3, 1776, Deane in an omitted passage says:

I must mention some trifles. The queen is fond of parade, and I believe wishes a war, and is our friend. She loves riding on horseback. Could you send me a narrowhegansett horse or two; the present might be money exceedingly well laid out. Rittenhouse's orrery or Arnold's collection of insects, a phaeton of American make and a pair of bay horses, a few barrels of apples, of walnuts, of butternuts, etc., would be great curiosities here, where everything

<sup>1</sup> John Adams' Works, III, 306.

American is gazed at, and where the American contest engages the attention of all ages, ranks, and sexes.

Of omissions on the score of dignity, or of delicacy, only one more example will be produced. Among the circumstances that lent to Lafayette's chivalrous espousal of the American cause the tinge of romance, none more directly appeals to our sense of humanity than the sacrifice of his new domestic felicity. In a joint letter of Franklin and Deane to the Committee of Foreign Affairs, of May 25, 1777, this subject is introduced in the following terms :

He has left a beautiful young wife big with child, and for her sake particularly we hope that his bravery and ardent desire to distinguish himself will be a little restrained by the General's prudence, so as not to permit his being hazarded much, but on some important occasion.

In printing this sentence, Sparks omits the reference to the young wife's condition.

### III.

The changes and omissions heretofore disclosed relate chiefly to matters of form. Those that follow relate to matters of substance.

Without the knowledge that distrust and contention at times distracted our public councils, it is impossible either to understand important incidents in our Revolutionary history or to appreciate the constant zeal, the lofty purpose and the complete devotion of those who guided the struggle for independence to a successful conclusion. It is well known that Washington encountered opposition both in the army and in Congress. This opposition proceeded sometimes from distrust of his capacity, sometimes from jealousy of his authority, sometimes from a desire to supplant him. To this fact is attributable, though perhaps not entirely, a movement in 1776 and 1777 to secure the appointment of a foreign officer to the command of the American army. This movement appears to have originated abroad, and it failed to receive support in the

United States; but it was not peremptorily discouraged by some of our representatives in Europe. The limitations of the present article do not admit of a full exposition of this incident, and I will merely quote from a letter of Silas Deane, written in France, to the Committee of Secret Correspondence, of December 6, 1776, the following paragraph which Sparks suppressed :

I submit one thought to you, whether if you could engage a great general of the highest character in Europe, such for instance as Prince Ferdinand, Marshal Broglie or others of equal rank, to take the lead of your armies, whether such a step would not be politic, as it would give a character and a credit to your military, and strike perhaps a greater panic in our enemies. I only suggest the thought, and leave you to confer with Baron de Kalb on the subject at large.

Among the adversities of the Revolutionary contest, none threatened greater injury to the American cause than the quarrels of our diplomatic representatives. Beginning with the altercations between that stormy petrel of controversy, Arthur Lee, and the ill-balanced and unfortunate Silas Deane, they finally assumed an aspect more portentous than the presence of the British armies in the field. In a passage omitted by Sparks, Franklin says of Arthur Lee: "That restless genius, wherever he is, must either find or make a quarrel;" and in Deane, rash, impulsive and given to suspicion, he found a ready antagonist. But the quarrel did not end with them. Franklin was dragged to the brink of the vortex; and, although he did not reply to Lee's assaults, a serious attempt was made to induce Congress to recall him, at a time when his overshadowing reputation and matchless skill were of the utmost value to the American cause.

To a proper comprehension of the origin and quality of these diplomatic quarrels, a knowledge of the character of Arthur Lee is essential, and such knowledge we naturally expect in a measure to gain from his letters. We find, however, that many passages of great importance, as showing the violence of the suspicions and the recklessness of the charges of this "*Junius Americanus*," have been suppressed in the text

of Sparks. Thus, in an omitted paragraph in one of the so-called "Colden" letters, of February 13, 1776, he speaks of the constitution of a committee of congress, — a committee whose members were men of the highest character, — as follows:

Yet I cannot tell to what fatality it is owing, that of the five, two are men of whom I have more diffidence than any others, I have almost said, thro' the whole continent; that I may be explicit, the second and last are men whom I cannot trust. If I am to commit myself into an unreserved correspondence, they must be left out, and the L's or the A's put into their places. This letter, therefore, is to you, sir, and not to the committee. I cannot imagine that what I desire can be deemed impertinent, when it is considered that the very purpose of its appointment is, so far as it relates to me, disappointed by the members. The selection of them instead of inspiring confidence, gives me an apprehension which I did not feel when they were in the general mass.

In a letter of September 10, 1779, to the president of Congress, Lee refers to William Carmichael, who for many years served his country abroad with unblemished reputation, in the following terms:

In the meantime I beg leave to inform Congress that I will transmit to them by the first opportunity such evidence of Mr. Carmichael's character and conduct as I trust will fully satisfy them how unfit and unworthy that gentleman was to be credited in any evidence or information he may have given concerning me. Neither do I despair of being able to prove in time to Congress and to my country the secret motives of interest or malice which have actuated the conduct of those who have stood foremost in endeavoring to cover the crimes of others and visit them unjustly upon me.

On September 19, 1779, the charges against Carmichael are renewed in a passage which, like the preceding one, is omitted. Against Franklin charges of fondness for pleasure, neglect of business and corrupt use of public funds are made and pressed with peculiar vindictiveness. In a single letter of December 7, 1780, matter of this character sufficient to fill more than two printed pages is suppressed.

Perhaps the most unnecessary and surely the most ludicrous incident of the attack on Franklin and Deane, was the participation of Ralph Izard. Izard was one of that unfortunate band of Revolutionary patriots, described in our encyclopaedias as "diplomatists," whose missions to various European courts ended in Paris. The post to which he was assigned was at the court of the Duke of Tuscany, but owing to the refusal of the duke to receive a representative from the revolutionary Congress, he never reached that court, and until he returned to the United States he resided in the French metropolis. A man of proud spirit and hasty temper, the disappointment and inactivity under which he was chafing only increased his unfitness for the office of peacemaker. For, as he informs us, it was in this capacity that he first intervened in the quarrels of the commissioners. In a letter to the president of Congress, of February 16, 1778, he fully describes, in three long passages omitted by Sparks, his relation to the subject, and at the same time discloses the extent to which his partisanship had then developed. These passages are as follows :

I look upon you as my friend, and therefore lay my sentiments freely before you, and confess to you that nothing has ever surprised me so much in my life as the proceedings of the two eldest commissioners in this business. Had they been in politics as infallible as the Pope intends to be in matters of religion, they could not have acted in a greater degree of confidence ; and upon every occasion they seem to consider themselves as the only persons interested in the fate of America. This conduct in one of the gentlemen astonishes me, and I can account for it in no other way than supposing him under the influence of the other, who does not appear to me the best qualified of any man I ever saw, for the character which he has the honor of filling. Upon my arrival here I found a great disunion among the commissioners, the two eldest constantly taking part against the youngest. This led me to conclude that the latter must be to blame, especially as I never, during the many years I have had the pleasure of his acquaintance, heard him accounted the mildest or gentlest man in the world. I immediately endeavored to accommodate these differences, but found it impossible. Both

parties were too firmly convinced of the justice of their own complaints to take such steps as would put it in the power of a mediator to bring about an accommodation ; and as I found that I was laboring in vain, I gave up the point. I cannot say that Mr. Lee has been entirely blameless ; but I must do him the justice to say that the conduct of the other gentlemen towards him has been unjustifiable, and such as could not fail of provoking any man not dead to all sense of injury. These proceedings, together with the misconduct of Mr. Morris, the commercial agent, have been, I am convinced, extremely injurious to our affairs, and have tended to lower the Congress in the opinion of the French court. Mr. Morris' irregularities, however, have carried him to the grave. . . .

I shall not be sorry to be separated from the two eldest commissioners here, whose proceedings I do not approve of. Their situation seems to have intoxicated them ; and there is a degree of hauteur and presumption about one of them (Mr. D.) that cannot fail of being offensive to any gentlemen who has business to transact with him. I am well aware how fatal it is to have disagreements among those who are engaged in the service of the public, and I have taken great pains to avoid them. . . .

In my former letters to you I desired you to direct yours to me to the care of the American commissioner at the court of France. The contents of this letter will show you the impropriety of such a direction. There is another very strong reason why I wish that this may not be done ; which is, that Mr. Lee assures me he has discovered that his dispatches to Congress have been opened by one of his colleagues. I think you will join me in rejoicing that these gentlemen are soon to act in different departments. You will be so good as to address your letters to me to the care of Monsieur le Comte de Clouard, Rue Colbert, à Paris, and they will be forwarded to me into Italy.

In omitted passages in letters of April 11, June 17 and June 28, 1778, and September 29, 1779, Izard continues his denunciations of Franklin with increasing virulence, and perhaps unconsciously shows how he took "great pains" to avoid "disagreements" with other public servants. Though he was not charged with any duty at the French court, the principal origin of his supposed grievance against Franklin and Deane was their disinclination to accept his advice, which Arthur Lee had solicited for purposes of opposition, as to the exclusion of cer-

tain provisions from the treaty of commerce with France. Stung by this fancied slight, Izard addressed Franklin in a tone of angry complaint, and finally worked himself into a frenzy because Franklin refused either to apologize or to quarrel. After vainly trying to compel the acceptance of one or the other alternative, he resorted to vituperation, which he poured forth in letters to Franklin himself as well as to Congress. Deception, ingratitude and dishonesty of various kinds are among the accusations copiously made, which are summed up in a declaration to the president of Congress that he does not believe that Franklin is under the restraint of the principles of virtue and honor. Izard's high character and unquestionable devotion to the American cause tended to give weight to his utterances, and from an historical point of view the most important part of his letters from Paris are the omitted passages relating to the attempt to bring about Franklin's recall.

#### IV.

In the text of Sparks expressions derogatory to Great Britain are sedulously excluded. Thus, where Arthur Lee refers to George III as a "merciless and unprincipled tyrant," and speaks of his "base mind," "the malignity of his passions" and his "rancorous and envenomed" disposition, the offensive expressions are omitted. An allusion to the "cruelty and vindictive spirit of the enemy" is expunged. In a letter of December 23, 1776, Arthur Lee declares that if the efforts of the United States to establish their independence should in the end "be found fatal to England, it is the perfidy of her ministers, *which never offers anything which could be trusted, which compels it.*" Though this letter was addressed to an Englishman, Lord Shelburne, the clause here italicized is dropped. Another passage, for the omission of which there seems to have been little reason, is that in which Arthur Lee, in reporting the theft of his papers by Elliott, the British envoy at Berlin, says:

He will do better next time, and his court will no doubt encourage him. Public ministers have been regarded as spies. Mr. Elliott will give them the additional title of robbers.



In a letter to John Adams, of February 19, 1780, Lafayette speaks of "treachery and falsehood" being employed by the British; Sparks substitutes the single word "misrepresentations."

But of the eliminations now under consideration, by far the most important are those that relate to barbarities practised by the British army. All through the correspondence, in the letters of Adams, Carmichael, Deane, Franklin, Arthur Lee, Livingston and Morris, references to this subject are omitted in the text of Sparks. Yet, in order to appreciate their importance, it is only necessary to advert to the fact that in the negotiations of the treaty of peace, the cruelties and wanton destruction of property committed by the British army formed the basis of a counter-claim which was successfully urged against the admission of the British demand that the loyalists should be compensated for the confiscation of their estates.

In conclusion, it is proper to say that the changes made by Sparks in the text of the Revolutionary correspondence are more numerous and more important than I had been led to suppose, when I began the work of comparison for myself. Not a small proportion of the errors commonly pointed out in his text may be attributed to the incompetency of copyists and proof-readers, a misfortune which it is hardly possible to escape. Few of the defects which I have exhibited seem to be of that character. They doubtless are referable to a misconception of editorial right and duty, and to a desire to avoid, in what was designed to be a permanent public record, the revelation of whatsoever might create or perpetuate ill-feeling, or exhibit our Revolutionary characters in any other than an always serious and favorable light. That they were due to a spirit of subserviency, no one familiar with the writings of Jared Sparks will maintain. Nor should they be permitted to blind us to the lasting obligations under which we stand for his timely, unceasing and fruitful exertions in the cause of American history.

JOHN BASSETT MOORE.

## INTEREST IN MANDAMUS CASES.

ONE of the conditions the existence of which is most necessary in order that a court may issue the writ of mandamus is that the duty of the authority to which the writ is directed, to do what the writ commands, shall be clear and specific. That is, mandamus is not a creative remedy. It never has the effect of calling into existence any new authority or duty, and it will never command the performance of an act which would be unauthorized in the absence of the writ.<sup>1</sup> The duty of the public authority is, however, often correlative with a right on the part of the individual applying for the writ, as private relator, to have the thing done which the mandamus seeks to enforce; indeed, in many cases the actual existence of the duty of the public authority or official to whom the writ is directed, to do the thing commanded, depends altogether upon the existence of this right in the individual. Thus, take the cases of *People vs. Newton* (112 N. Y. 396) and *Ex parte Railroad Company* (121 N. Y. 536). In the first case the Third Avenue Railroad Company in the city of New York applied to the courts for a mandamus to force the commissioner of public works of New York City to issue a permit for opening the streets in order that the company might substitute cable for horse power in the traction of its cars. In this case the court decided that the right of the railroad company to open the streets was not clear, and that there was, therefore, no duty upon the part of the commissioner to issue the permit; the mandamus, accordingly, was refused. After the decision the legislature of the state of New York passed an act permitting horse-car companies to substitute cable for horse power under certain conditions. The conditions were complied with by the Third

<sup>1</sup> *People vs. Campbell*, 72 N. Y. 496; *People vs. Board of Police*, 107 N. Y. 235; *People vs. Village of Crotty*, 93 Ill. 180; *High on Extraordinary Legal Remedies*, 2d ed., sec. 7.

Avenue Railroad Company, but the commissioner of public works still refused to issue to the company the permit to open the streets. Application having been again made for a mandamus to compel the issuance of the necessary permit, the court held that, as the company now had the right to have the thing done which it sought to have enforced, it was the duty of the commissioner of public works to issue the permit; and a mandamus was granted compelling him so to do.

As a result of this dependence in many cases of the duty of the officer upon the right of some individual, the rule is sometimes stated in another form. It is said that the right of the individual applying for the mandamus, to have that done which the court is asked to command, must be clear and specific before the mandamus will issue. Indeed, this is perhaps the more common way of stating the rule in the decisions of the courts.<sup>1</sup> The reason for it is that in many cases, particularly where the desired mandamus is to be directed to private corporations, the public has no interest in the doing of the act demanded. Practically the real ground for the issue of the writ in these cases is the interest of the individual, and it is only natural for the courts to emphasize the right of the individual and to ignore the duty of the public authority resulting therefrom. This tendency, however, is unfortunate, since the resulting statement of the rule is neither exact nor comprehensive, and has led to the adoption by some of our courts of what seems to be a wrong rule of law — a rule which also has had politically a bad effect. The resulting statement of the rule is defective because, while in many cases the duty of the public authority is correlative with a right on the part of the individual, in many other cases there is no such correlation. The duty often attaches to a public official or private corporation merely by virtue of some provision of positive law, and is absolutely independent of all individual rights. When this is the case the public alone is interested, and the only reason for issuing the writ of mandamus is to be found in the duty of the public official or private corporation.

<sup>1</sup> High, *op. cit.* sec. 9.

In those cases in which individuals alone are interested, it early became the rule, through the emphasis which was laid on individual rights, to oblige the individual applying for the writ as a private relator to show some interest peculiar to himself, and not common to all citizens, before the writ would issue. But the practice of ignoring the duty of the officer or authority and emphasizing the right of the individual in cases in which the public was not concerned, was extended to other cases. The courts of some of the American commonwealths began to hold that the individual applying for the writ of mandamus as private relator must show some interest peculiar to himself, and not common to all citizens, not alone in cases where the matter interested only private individuals — where the duty of the authority to which the writ was directed, to do the thing sought to be commanded, depended for its existence on the existence of some private right — but also in cases where the public only was concerned, where the duty of the authority was absolutely independent of all private rights. The result was that in cases where the public only was concerned the ordinary citizen (*i. e.* the citizen having no interest peculiar to himself) might not apply to the courts for the writ of mandamus for the simple enforcement of the law and of the performance of their duties by officers, but that the application in these cases could be made only by the law officers of the government, as representing the public.

The case in the United States which seems to have been the cause of the adoption of this rule is that of *Wellington et al.*, petitioners.<sup>1</sup> In the course of his opinion Chief Justice Shaw extended to cases in which the public alone was interested the rule which was applicable to cases in which a private individual alone was interested, *viz.* that the private relator must, in order that the writ may issue, prove to the court that he has some interest peculiar to himself and not common to all citizens. Justice Shaw said:

Undoubtedly the general rule is that a private individual can apply for the writ, but only in the cases where he has some private

<sup>1</sup> 16 Pickering, Mass. 87.

or particular interest to be subserved or protected by the aid of this process, independent of that which he holds in common with the public at large: and it is for public officers exclusively to apply where public rights are to be subserved. [Page 105.]

The only citation made by the justice in support of the rule which he thus laid down was the case of *Rex vs. Merchant Taylors' Co.* (2 B. & Ad. 115), which he cited as from Barnwell and Alderson's reports, when it is in fact to be found in Barnwell and Adolphus. Examination of this case will show that it did not lay down the rule stated by Judge Shaw. It was decided with reference to a private corporation and not a public officer; and a purely private right was concerned, in which the public had no interest. Unfortunately for the law, this dictum of Judge Shaw's, for it was really only a dictum, was made the basis of a decision in the case of *Sanger vs. County Commissioners* (25 Me. 291, 296), which held that a private individual could not by mandamus force the county commissioners to lay out a road, even where the law clearly made it their duty to do so. In the opinion in this case Judge Shaw's dictum is quoted word for word, and the appearance of the same typographical error in the citation of the case of *Rex vs. Merchant Taylors' Co.* would seem to show that the Maine judges did not take the trouble, or else were unable, to verify Judge Shaw's reference. The Massachusetts dictum and the Maine decision were made the ground of decisions in both Pennsylvania and Michigan. The supreme court of Pennsylvania decided, in the case of *Heffner vs. Commonwealth*,<sup>1</sup> that a private individual could not by mandamus force a common council of a borough to open a certain alley within the corporate limits, although an act of the legislature enjoined upon the council to open the said alley. The reason given for the decision was that the private citizen applying for the writ had no interest peculiar to himself and not common to all citizens; and the Wellington and Sanger cases were cited as authorities. In Michigan, the supreme court decided in the case of *People*

<sup>1</sup> 28 Pa. St. 108.

*vs. Regents*<sup>1</sup> that a private citizen could not by mandamus force the regents of the university to appoint a professor of homœopathy in the medical school, although the law required the regents to make such an appointment. The reason advanced for the decision was again that a private citizen did not have sufficient interest; and the judge giving the opinion alludes to English, Massachusetts, Maine and Pennsylvania decisions in support of the rule he adopts, although without specific citation. The same rule was laid down in a later case,<sup>2</sup> where it was held, largely on the authority of *Rex vs. Merchant Taylors' Co.*, the *Wellington* case and the *Sanger* case, that a private citizen, though a wagon-maker, could not, on account of lack of interest, by mandamus force the inspectors and agent of the state prison to desist from teaching convicts the trade of wagon-making and from making wagons by convict labor in the prison. It is only fair to say that this is not the only reason for the decision, but it must be admitted that it approves Judge Shaw's rule. In a still later case,<sup>3</sup> the Michigan court held, though without citing cases and almost without argument, that an individual could not by mandamus force a county officer who had changed the location of his office to move back to the old county seat; and the ground of the decision was that the individual could not show sufficient interest peculiar to himself and not common to all the public in the thing sought to be commanded. Finally, this rule has been adopted in Kansas in a series of decisions which, though they purport to interpret a statute relative to the mandamus, really adopt this rule as to interest; for the statute can be regarded as little more than declaratory of the common law and is susceptible of another interpretation.<sup>4</sup> In one of these decisions, *Bobbett vs. State*, it is said further that the decision is in accordance with Massachusetts, Maine, Pennsylvania and Michigan cases.

<sup>1</sup> 4 Mich. 98.

<sup>2</sup> *People vs. Inspector*, 4 Mich. 187.

<sup>3</sup> *People vs. Green*, 29 Mich. 121.

<sup>4</sup> *Bobbett vs. State*, 10 Kansas, 9; *Turner vs. Commissioners*, *ibid.*, 16; *State vs. County Commissioners*, 11 Kansas, 66.

These are the most important cases cited in support of the rule that the private relator in mandamus must always show some interest peculiar to himself. The rule is practically approved by Mr. High, who, in section 33 of his most excellent work, says :

It is of course essential to the granting of the writ as against public officers, that the relator on whose application the relief is sought should show some personal interest whose protection he seeks to enforce, and it may be stated as a general principle that mandamus will not lie to compel action on the part of public officers, where it is apparent that the relator has no direct interest in the action sought to be coerced, and that no benefit will accrue to him from its performance. To authorize the relief, therefore, it must clearly appear that there is a specific ministerial duty in the performance of which the applicant for relief is directly interested.

Mr. High does, it is true, in another part of his work—that devoted to parties in mandamus (sections 430–435)—modify considerably the statement made in section 33, and admits that the public character of the duty makes it in most states unnecessary for the private relator to show any interest peculiar to himself; but he seems to regard the Massachusetts rule as being based on reason.

The rule requiring private interest peculiar to the relator, and not common to all citizens, in order to apply for the mandamus, is thus traced back to a dictum of Chief Justice Shaw of Massachusetts, based upon a misconception of an English case. While it is supported by many decisions and is accepted by the best text-book on the subject, it is of unsatisfactory and untrustworthy origin, and it has been modified considerably by the decisions of many of the state courts, among which may be mentioned those of New York; nor has it received the approval of the United States supreme court. As modified it will read: While in cases of purely private rights and of no interest at all to the public at large, the private relator in mandamus may be held to show some interest peculiar to himself, and not common to all citizens, still, in the case of official duties whose performance is of interest to the public at large,

he need show no greater interest than that which is possessed by all citizens ; and the power to force by mandamus the performance of duties of interest to the public alone is not confined to the law officers of the government.

The leading case in New York on this subject is that of *People vs. Collins*,<sup>1</sup> which decided that any citizen might by mandamus force the proper authority to lay out highways which the law said should be laid out. A later case in the same state, *People vs. Halsey*,<sup>2</sup> held that a private citizen might apply for mandamus to force the collection of a tax which had been legally assessed. In this case the rule is particularly well stated. The judge says :

The writ of mandamus may, in a proper case, and in the absence of an adequate remedy by action, issue on the relation of a private individual to redress a wrong personal to himself, or on the relation of one who, in common with all other citizens, is interested in having some act done of a general public nature, devolving as a public duty upon a public officer or body, who refuse to perform it.

A very recent case on the same point is that of *People vs. The Common Council of Buffalo*,<sup>3</sup> which held that any private citizen might apply for mandamus to force the common council of a city to make the necessary appropriations for carrying out the civil service laws of the state. This rule has been adopted in a number of other states : in Iowa, where it was held, in the case of *State vs. County Judge*,<sup>4</sup> that any citizen might have a mandamus to force a recanvass of votes in an election relative to the relocation of a county seat ; in Indiana, in the case of *Hamilton vs. State*,<sup>5</sup> where it was held that a private citizen might apply for mandamus to force the county auditor to deduct from the valuation of the real estate of the county fifteen per cent which had been illegally added to it ; in New Jersey, in the case of *State vs. Common Council*,<sup>6</sup> which held that a citizen might apply for a mandamus to force the common council of a city to proceed to order an election to fill a

<sup>1</sup> 19 Wendell, 56.

<sup>2</sup> 37 N. Y. 344, 346.

<sup>3</sup> 16 Abbott's New Cases, 96; affirmed in 38 Hun. 637.

<sup>4</sup> 7 Iowa, 187, 202.

<sup>5</sup> 3 Indiana, 452, 458.

<sup>6</sup> 33 N. J. L. 110.



vacancy in the representation upon the council of the ward of which such citizen was a resident; in Illinois, in the cases of *Pike vs. State*<sup>1</sup> and *Ottawa vs. People*,<sup>2</sup> in the latter of which it was held that a private citizen might by mandamus force a municipal corporation to maintain a bridge, the ground of the decision being that the duty to maintain the bridge was a public one.

The rule that in the case of public duties it is not necessary for a private relator in mandamus to show any interest peculiar to himself, seems to have been that of the old English law, notwithstanding Judge Shaw's statement to the contrary. This may be seen from the cases of *King vs. Commissioners*,<sup>3</sup> which held that a private citizen might by mandamus force the tax commissioners to appoint a clerk, and *King vs. Railway Company*,<sup>4</sup> where a railway company was forced by mandamus on the relation of a private person to lay down tracks which it had illegally taken up. The United States supreme court has approved this rule, holding, in the case of *Union Pacific Railway Company vs. Hall*,<sup>5</sup> that a private citizen might by mandamus force a railway company to operate its road as a continuous line if it is required so to do by law. In the opinion given in this case the court says: "There is a decided preponderance of American authority in favor of the doctrine that private persons may move for a mandamus to enforce a public duty" (page 355). Finally, it is to be noticed that the Massachusetts courts show at the present time a tendency to abandon the doctrine introduced by Judge Shaw into the law of the commonwealth. In the case of *Attorney General vs. Boston*<sup>6</sup> the supreme court says: "There is a great weight of opinion in favor of the doctrine that any private person may move, without the intervention of the attorney general, for the writ of mandamus to enforce a public duty not due to the government as such." The recognition of the right of any citizen to apply for mandamus in these cases does not,

<sup>1</sup> 11 Illinois, 202, 208.

<sup>2</sup> 48 Illinois, 233, 240.

<sup>3</sup> 1 T. R. Dunford & East, 146.

<sup>4</sup> 2 B. & Ald. 644.

<sup>5</sup> 91 U. S. 343.

<sup>6</sup> 123 Mass. 460, 479.

however, deprive the government officers of the power to do the same.<sup>1</sup>

The rule, then, that private interest must always be shown by a private relator in mandamus, even in case the attempt is being made to enforce the performance of public duties, is not only of unsatisfactory and untrustworthy origin, but is also opposed to the greater weight of American authority. It is therefore from the standpoint of the positive common law a bad rule. Further, it is not based on adequate reason. The reason which is most commonly advanced for its adoption is that by its means a multiplicity of suits will be avoided. But if it is remembered, as the United States supreme court suggests, "that granting the writ is discretionary with the court . . . it may well be assumed that it will not be unnecessarily granted,"<sup>2</sup> and that, therefore, suits will not be unnecessarily multiplied. Trusting to the courts' discretion is much to be preferred to the adoption of a vicious rule of law. And it is vicious, since it makes it absolutely impossible for a private citizen to enforce by mandamus the performance by public officials of duties which affect the public alone. It is particularly vicious in a country like the United States, where the administration is extremely decentralized — where the power of the superior officers of the administration to compel inferior officers to perform their duties is so slight. By its adoption the province of the writ of mandamus is so narrowed that it may be made of use only as a means of protecting individual rights, and its use as a means of merely maintaining the law is destroyed.

While the judicial control over administrative action is instituted mainly with the idea of protecting individual rights, there is no reason why at the same time it may not be made use of subsidiarily to promote the efficiency of the administration. Experience has shown that one of the easiest ways in

<sup>1</sup> See *People vs. Bennett et al.*, 54 Barb. 480, where it was held that mandamus would issue on the application of the board of education of a village in order to force the trustees thereof to make the necessary provision for school expenses as provided by law; and *Attorney General vs. Boston*, 123 Mass. 460, 478.

<sup>2</sup> *Union Pacific R. R. Co. vs. Hall*, 91 U. S. 343, 356.

which this may be done is by enlarging the popular control over officials, to be exercised through application to the courts. In the state of New York the need of some such popular control has been so keenly felt that it has been provided for in other directions by special statutes. Thus the courts of New York began at quite an early time to hold that, in order to obtain an injunction to restrain the action of public officers, the private petitioner for this relief must show some interest peculiar to himself.<sup>1</sup> Such was also the rule in Massachusetts.<sup>2</sup> The resulting emancipation of public officers from popular control over the performance of duties which interested the public alone had such evil consequences, that the New York legislature was forced to provide that any citizen and tax payer might apply for an injunction to prevent public officers from wasting public funds.<sup>3</sup> It is not strange that the rule demanding from the private relator in mandamus proceedings in the case of public duties, some interest peculiar to himself, should have originated in a state where such interest was requisite in application for an injunction. And it is a significant fact that one of the states which thus denied relief in injunction should have changed by statute its law in this respect, and should have brought it into accord with the rule it had been one of the first to adopt in mandamus cases. New York, at least, has thus declared that these extraordinary remedies are a means by which the people may control the performance of public duties by public officers, and that therefore private relators should not in cases of public concern be bound to show interest peculiar to themselves.

FRANK J. GOODNOW.

<sup>1</sup> *Doolittle vs. Supervisors*, 18 N. Y. 155.

<sup>2</sup> *Carlton vs. Salem*, 103 Mass. 141.

<sup>3</sup> Code of Civil Procedure, sec. 1925.

## OFFICIALISM IN ENGLAND.

ONE of the most interesting phases of state socialism has very recently been pressed upon public attention by the vigorous action of the English bar. For this particular phase of the general socialistic movement the lawyers have coined the term "officialism." The term is intended, like all terms coined by the enemies of a movement, to be at once an epithet and an argument, and must be taken with the same allowance as "centralization," "robber tariff" or "force bill," when those terms are used in our own political vocabulary. The term played a considerable part in the recent Parliamentary election, so far as the members of the legal profession were concerned, and one of the leading legal periodicals urged the members of the bar to "interview" the candidates in their respective districts and obtain pledges against any further extension of the movement. Publications of the Incorporated Law Society and other associations of lawyers were widely distributed "with a view to interviews with candidates"; candidates were asked to pledge themselves against the movement, or at least to make no pledges in favor of it; and in general a kind of lesser campaign was waged, in which officialism was deemed a more important question than home rule.

Having fought this preliminary skirmish,—with what success does not appear,—the lawyers are now preparing for the more serious battle in Parliament when that body shall assemble. At every meeting of the various legal societies during the past year this subject has been uppermost. Resolution after resolution has been passed denouncing officialism; many learned papers have been read on the subject; various committees have made extended reports upon it; and the profession as a unit has set itself to prevent officialism from pushing another inch in advance of where it now stands, and even, perhaps, to force the "hydra-headed monster" to retreat.

**Officialism** was described by the president of the Incorporated Law Society, in his address at the recent meeting at Norwich, as a "gigantic scheme" for "the transaction of business of all kinds by officials of public departments." The report of the council of the society defined it generally as "the creation of government monopoly in the management of private business," and more specifically as "transferring to official departments professional work hitherto performed by individuals." This last is in fact the officialism to which the legal profession objects, and it is confined to the transaction by government departments or officials of certain kinds of business hitherto carried on by the lawyers either in or out of court.

The specific kinds of officialism which are either partially established or imminently threatened seem to be embodied in four distinct measures: (1) the compulsory administration of bankrupts' estates by the bankruptcy department of the Board of Trade; (2) the compulsory winding-up of joint stock companies by the same department; (3) the appointment of a public trustee and executor to administer trusts and the estates of decedents; (4) the compulsory registration of land transfers in the land registry department. It may conduce to a better understanding of the questions involved if each of these measures is examined separately.

1. As to bankruptcy, there is now in force a Bankrupt Act passed in 1883 which gives to the bankruptcy department of the Board of Trade a large power in the conduct of bankruptcy proceedings. The effects of the measure are thus described in the report of a special committee of the Incorporated Law Society which was published in January, 1892:

The result of the act of 1883 was to take the management of bankrupts' estates out of the hands of the creditors and their representatives, and to put it into the hands of the official department. Every estate had to pass through the hands of the official receivers. It is true that the creditors ultimately had the power by a resolution to appoint an independent trustee of their own choosing, and the official receiver was, by the act of 1883, declared incapable of being

nominated as trustee ; and although this power was fettered with many formalities, it may be seen from the annual bankruptcy reports that, although under section 121 estates under £300 are left in the hands of official receivers, yet in all the more important cases non-official trustees are generally appointed. Excluding cases under £300, it appears that in the year 1890, 500 cases passed into the hands of non-official trustees, while the official administration was continued in 105 cases only. In the previous year (1889) the figures were 534 non-official as against 103 official. The preference of creditors for non-official trustees is still more clearly shown by the official report for 1889, by which it appears that of estates over £300 those intrusted to official administration realized £90,469, while those intrusted to non-official trustees realized £674,648, and that in no single case where the assets exceeded £4000 was the estate left in the hands of officials.

In a paper read by Mr. R. Pybus, at the provincial meeting of the Incorporated Law Society in October, 1892, an attempt is made to show, and figures are given to verify the statement, that the cost of official administration is considerably greater than the cost of non-official administration, and that the official bankruptcy department is a heavy charge on the tax payers, being far from self-supporting. In the report of the Board of Trade for the year ending December 31, 1891, the inspector-general confesses and avoids as to the first charge and enters an emphatic denial as to the second. As to the greater cost of official administration, he pleads that the official receiver has only the leanest carcasses to carve, and the percentage necessary for administration is consequently higher. According to his figures the cost in case of non-official administration is 26.55 per cent, and in case of official administration it is 32.65 per cent. As to the cost to tax payers, he alleges that the department has never cost the tax payer a penny since its foundation, and Mr. Pybus admits in a note to his paper that if that statement is correct some of his criticism on the official administration falls to pieces.

It is not clear whether the Board of Trade favors such an amendment of the Bankruptcy Act as would give it the fat as well as the lean carcasses to carve, but it is evident that the

lawyers are apprehensive that the tendency toward officialism may result in that. At present it would appear that the lawyers are getting the fat carcasses to carve in cases of bankruptcy, and are using the Bankruptcy Act mainly to prove that where there is freedom of choice the private individual prefers his solicitor to a public official. Of course it is obvious that where creditors consult their legal advisers, the latter will invariably advise the appointment of a private trustee, and that therefore the bankrupt estates administered by private trustees will always exceed in number those administered by official receivers. And the larger the estate the more likely is it to be removed, because the more likely creditors are to seek legal advice. The true test as to the relative expense of the two systems would seem to be a comparison between the expense under the act of 1869, which gave creditors entire freedom, and the expense under the existing act. But one on this side of the water can speak only with great diffidence on such a subject.

2. As to the winding-up of joint stock companies, an act was passed by Parliament in 1890, which, says the report of the special committee of the Incorporated Law Society,

'has already handed over a vast amount of work to an official department, and under which also, and apparently with a view to facilitate the more active interference of that department, it is now proposed to take away the winding-up jurisdiction from the Chancery Division.

Apprehension may reasonably be entertained [continues the report] lest the zeal of the bankruptcy department should lead to pressure being put on the judicial authorities with the view of placing all liquidation under the control of that department.

The purport of the act seems to be to assimilate the proceedings in the winding-up of corporations to the proceedings in administering a bankrupt estate. Upon the issue of an order for the winding-up of a company, an official receiver or liquidator connected with the Board of Trade takes charge of the assets and affairs of the company, for the purpose of making a public inquiry into the circumstances which have led up

to the liquidation. This officer, after an investigation, makes an official statement of the condition of the affairs of the company and of the causes of its failure. After this provisional examination the affairs may be turned over to a liquidator appointed by the court, though the official liquidator, unlike the official receiver in bankruptcy, is eligible to this appointment and may, if appointed, continue the winding-up. The object is to insure a public investigation, and to uncover, if possible, the numerous frauds by which corporate managers succeed in wrecking corporations. In cases of the bankruptcy of individuals and of corporations many frauds may be perpetrated on stockholders and creditors, and many individuals be made to suffer loss, whose ignorance or want of concerted action renders all investigations futile. It is contended that an official department, by taking control of these estates and assets, and having at least provisional powers of administration, may, through experienced officials, uncover these frauds and protect persons who are unable to protect themselves. The crucial question in the matter is, whether it is the duty or right of the government to undertake these things, and on that point the English lawyers are at issue with the English government.

3. The Public Trustee Bill (for this is not yet a law) proceeds on the same lines. It is proposed that a public official be named as "public trustee" to have charge of trust estates. It is not proposed that creators of trusts be required to name this official as trustee, but they may do so, either alone or in connection with private trustees. It is of course thought by the friends of the bill that if the government undertakes to manage trust estates, the greater security offered against loss by fraud or ignorance will lead to a very general desire on the part of testators to place trusts which they may create in his hands. Although this bill, or these bills, — for several have been introduced, — provide that the testator or settler may also name the solicitor to be employed, and that if none is named the family solicitor shall act, still the legal profession oppose the bill on grounds of public policy, and as an addi-



tional step toward officialism and state socialism. The president of the Incorporated Law Society declared in his recent address at Norwich, that

solicitors are not easily roused from the calmness of attitude with which they habitually approach the consideration of professionally interesting subjects, but it is not too much to say that the Public Trustee Bill excited a feeling of opposition stronger, if possible, than that which was excited by the Land Transfer Bill.

Mr. F. P. Morrell, of Oxford, read a paper on the subject in which he sought to show that the bill was a mischievous one, and even if it were not, would result in no good, as creators of trusts would still prefer private trustees, and the public trustee would be an additional burden on the tax payers. On this point also the lawyers have presented a solid front in opposition to what they term officialism.

4. The Land Transfer Bill, of all others, is the one which has been most persistently and unitedly opposed. This bill proposes to make compulsory in England a system of land transfer and registry similar to that in force in Australia and many other English colonies, and which is commonly known as the "Torrens system." There is already in force a voluntary system for bringing land titles under such a registry, but, as the lawyers triumphantly point out, the public has never cared to avail themselves of it, and, it is asked, why should land owners be compelled to register their titles under such a system if they are satisfied with existing methods?

This system of land transfer has been so often described of late that it must be familiar to all students of political science. It consists, in essence, of a registration of titles instead of deeds; makes the registry book evidence of an indefeasible title in the owner registered; protects injured persons by compensating them out of a fund created by fees paid for registration; and thus renders dealings in land almost as simple as dealings in personal property. It is in fact an attempt to assimilate the law of realty to the law of personalty. When once a title is registered, the owner is no more likely to need

the services of a lawyer in transferring it than he is to need such services in transferring a horse. It is therefore obvious that such a system would be a serious blow to the interests of the legal profession. The report of the special committee, already referred to, says :

The capital value of real property in England can hardly be satisfactorily estimated ; but in a Treasury minute, presented to the House of Commons in 1885, the gross capital value of real property in the United Kingdom is estimated at £3,778,437,000. This vast property is used in the most various ways—in agriculture, railways, waterworks, manufactories, mines, harbors and docks and other public works, as well as for rural and urban dwellings. The persons interested, as freehold owners, leaseholders and occupying tenants, are innumerable, and the daily and constant dealings with their separate interests so frequent and intricate as to defy computation. These transactions, in which despatch is often of the greatest importance, form the daily work of professional men scattered over England, whose number exceeds 15,000. They are, according to the Land Transfer Bills, to be brought compulsorily into an office to be established by the government.

Alarm was first taken in 1886, when Lord Halsbury, lord chancellor of the late government, announced in a speech at the Mansion House the intention of the government to introduce a Land Transfer Bill. But this alarm was somewhat decreased by what the profession eagerly took up as a pledge on his part that the bill should proceed with a view to the “rights of all.” The *Solicitors’ Journal*, one of the leading periodicals of the profession, has consistently contended that solicitors have “vested rights” in the professional work for which they have fitted themselves, and that government cannot justly deprive them of these rights by itself undertaking this work. The Land Transfer Bill as introduced in 1887 seemed to be an attack on these “vested rights,” in spite of what the profession had regarded as a pledge that their interests should be looked after. “The lord chancellor,” said the president of the Incorporated Law Society in his speech at Hull in 1890, “has made up his mind to confiscate the remuneration of

solicitors in relation to land transfer;" and the president urged the profession to "stand to its guns" in the "war" which was being waged against them by the promoters of this measure.

At a meeting of the society in London in 1892, which the *Solicitors' Journal* says was one of the largest ever known, the officialism of the government was roundly denounced, cheers greeting every speaker, and the following resolution was unanimously carried:

That the recent and threatened extension of officialism is opposed to public policy and to the wishes of the persons whose private interests are concerned, who prefer to manage their own affairs in their own way and to leave the transaction of their business to agents of their own choosing.

The mover of the resolution, Mr. Godden, placed it in his speech mainly on the ground of public policy. But Mr. Parker, who supported the resolution, frankly stated that he dissented from Mr. Godden's opinion that they should take the public point of view, and insisted that they should take the professional point of view; for if there were to be any additions made to the private affairs managed by officials, then they as a profession must consider their days numbered. If the public wished to be heard, let it speak. But so long as solicitors as a profession were allowed to exist and to keep up a monopoly, so long they were entitled to be heard. The *Solicitors' Journal* declared that Mr. Parker's able and downright speech was more in accord with the views of the meeting. Mr. Gribble, who also spoke for the resolution, called attention to the enormous patronage which officialism would give to the government, and declared that it was exceedingly probable that the same results would follow in England as in America, namely, that they might see these officials appointed and removable by the government, and everybody knew the evils which had resulted in every village in America from this state of things.

The same divided view as to the best methods of defence prevailed at the recent meeting at Norwich. The president, Mr. Pennington, took the view of public policy, but Mr.

Addison, like Mr. Parker, said it was idle to pretend to neglect or overlook the interests of the solicitors themselves. The resolution moved by Mr. Addison was adopted: "That the system of official transaction of private business is against public policy, and unjust to the individuals with whom the officials compete."

The whole matter from the point of view of the solicitors is put in a series of statements which appear in a report of the council of the Incorporated Law Society. Some of these statements are as follows:

Government interference in the management and administration of private affairs — *i.e.* not of general public concern — is undesirable, and the conduct of such business is better left to the control of the persons directly interested.

Government monopolies carrying on administrative business are against public policy.

Official departments undertaking private business, and not self-supporting, become a burden to the public exchequer with no corresponding public benefit.

There is no public demand for increased officialism, and proposed extensions emanate from official departments. Public opinion is adverse to official interference, and the public prefer to manage their own affairs in their own way.

The increase of patronage in the appointment to numerous highly-paid offices is to be deprecated.

An official system which is not required and not self-supporting is a source of danger, as likely to press for extension of its operations, either compulsorily or otherwise.

Official administrative systems tend to become less efficient and more incumbered with routine, having no personal inducements to maintain a high standard of efficiency.

Unsatisfactory administrative official systems, when once established, cannot be replaced without compensation or injustice.

These statements probably put the case of the solicitors in as favorable a light as possible, for they are all addressed to questions of public utility. But, as has been pointed out, a large number of leading solicitors frankly admit that the solicitors must recognize the fact that they are fighting for

professional privileges which they have enjoyed time out of mind, and that they cannot hope to escape the charge of being actuated by personal motives. To these statements must therefore be added those already referred to, namely, that solicitors have "vested rights," that they have spent their time and money to fit themselves to do a work which the law encouraged them to undertake, and that the government cannot justly deprive them of this work by itself undertaking it. One paper read at the recent meeting at Norwich was happily entitled : "The State Turned Solicitor," an expression which conveys the idea that in addition to the natural competition among the profession as individuals, there is, under this system of officialism, the vastly greater competition of the state itself, which offers its services on terms more favorable, it may be, than any a private person can afford to offer. It is not strange, therefore, that a professional class accustomed to regard its privileges as the most sacred of any conferred by law or custom, should see in this movement a menace to itself and to the public welfare. The opponents of the system pertinently ask why, if the government turns solicitor, it should not also turn physician or dentist ; and at this point the discussion verges fairly into the field of debate between individualism and state socialism.

This opposition of a united profession is certainly an interesting phenomenon in what must be conceded to be the steady growth of state socialism in England. In their public meetings and in their professional papers, notably the *Law Times* and the *Solicitors' Journal*, the most active and the ablest practical opposition to state socialism has been developed. Heretofore the socialistic measures adopted by the government have been of such a character as to touch mainly large corporate interests whose influence is measured principally in money, while the purpose of the measures has appealed strongly to public sentiment. But in the domain of legal reforms the measures do not appeal so directly to the sympathies or to the interests of the public, while they do come in contact with the interests and the prejudices of the ablest and

most influential body of men in the community. Such measures, therefore, have a double obstacle to overcome, the indifference of the people and the open hostility of the legal profession.

In spite of these obstacles two measures have already been passed which give to officials much of the work heretofore done by solicitors, and there seemed to be a purpose on the part of Lord Salisbury's government to extend the scope of those measures so as, possibly, to turn over to the government the administration of all bankrupt estates and of all corporate liquidation. The success in passing those measures emboldened the government to push vigorously the other two which are yet in abeyance, namely, the Public Trustee Bill and the Land Transfer Bill, but the dissolution of Parliament and the defeat of the government furnished a breathing spell to the enemies of the measures. It remains to be seen whether Mr. Gladstone's government will take up these new measures and seek to extend the two already in force. If it should, or if private members should bring forward bills for that purpose, there is likely to ensue a determined struggle between the promoters of what are denounced as "socialistic" measures and the defenders of what are termed "individual" rights. The discussion will take a wide range, including the questions of constitutional right, ancient liberties, public policy, economy in administration, government patronage, the freedom of business enterprise, vested rights, and last, but not least, the personal interests of fifteen thousand solicitors, who obey the first law of nature in engaging in a supreme struggle for self-preservation.

ERNEST WILSON HUFFCUT.

## A STUDY IN VITAL STATISTICS.

VITAL STATISTICS may be defined as that branch of statistics which studies the population of a country, as distinct from the acts or products of the population. The term corresponds almost exactly to what the Germans call statistics of population (*Bevölkerungsstatistik*) and to what some French writers call demography (*démographie*). There are two great divisions of vital statistics: one investigates the condition of the population at a certain date, and thus disregards the element of time and change; the other investigates the changes in the population between two points of time. The statistical material for the study of the first branch is contained in our censuses, state and national, which seek to give an instantaneous photograph of the population at a certain moment. Practical difficulties may keep this from being more than a purely ideal goal, like a limit in mathematics; but it is a goal that may be approximated indefinitely. Our censuses also give much aid in studying the second division of vital statistics. From a comparison of two censuses we may draw certain conclusions as to the changes that have occurred in the interim. Thus if the population has increased, we may infer with certainty that the increase from births and immigration has exceeded the decrease from deaths and emigration by the amount of the total increase. But censuses do not of themselves furnish any analysis of the changes of population, any determination as to the relative importance of the various causes at work. Hence the need for continuous records of certain important and frequently recurring changes. Such records now commonly include the number of births, immigrants, cases of sickness, deaths, emigrants, marriages and divorces. The phrase vital statistics is often used in a limited sense to denote a comparison of these changes with the total

population and with one another; it is even sometimes narrowed to a study of births, marriages and deaths. In the foregoing analysis I have sought to justify its use in the wider sense and to show that vital statistics is a distinct and clearly marked branch of statistics, if indeed it be not, as is claimed by several French writers, a separate science.

The materials for the study of vital statistics are contained in the various censuses and in periodical registration reports of some form. Our national censuses are tolerably satisfactory, but the continuous registration of important changes, except the immigration over sea, is left to the separate states and is in the main very imperfect or entirely wanting. As there is no record of overland immigration and no record of the counter-current of emigration, it is obvious that the sources for the study of vital statistics in the United States are extremely incomplete. With the exception of Spain, all the great states of Europe publish their yearly record of marriages, births and deaths. Even the imperfect statistics of Russia are in this respect superior to those of the United States. Six years ago the national government, to meet a pressing practical need for information, entered this field so far as to collect and publish the existing statistics of marriages and divorces for the preceding score of years.<sup>1</sup> The result of the investigation of marriages, the compiler himself declared,

is thoroughly incomplete and unsatisfactory. Very few states have any registration system by which marriages are recorded. . . . In some the work of compilation at the central office is so carelessly and inaccurately done as to detract greatly from their value. . . . Twenty-one states provide for returns to some state officer of marriages celebrated. These returns as a rule, however, give but few facts relative to the persons married, and the facts that are given are not identical and are compiled so carelessly as to be nearly worthless.<sup>2</sup>

<sup>1</sup> A Report on Marriage and Divorce in the United States, 1867 to 1886; by Carroll D. Wright, Commissioner of Labor. Washington, 1889.

<sup>2</sup> Report, pp. 18, 19.



In a recent examination of the volume<sup>1</sup> I sought to analyze and interpret its figures so far as they relate to divorce. The object of the present paper is to set forth some results of my further study in the field of vital statistics as above defined. The sources are so fragmentary as to prevent any attempt at presentation of the conclusions in systematic form. Since our judicial statistics of divorce are much better taken and preserved than our civil statistics of births, marriages and deaths, for a long time to come the former must occupy a disproportionately large place in any treatment of the vital statistics of the United States.

For any detailed study of vital statistics it is important to know the population for each year, in order to compare the number of births, deaths, marriages or divorces with the whole number of people. As this population is ascertained only once in ten years, or in some few states once in five years, the population for the intermediate years must be found indirectly. The method of assuming that in each year of the interval the population changed by the same amount, one-fifth or one-tenth of the change observed in the five or the ten years between censuses, is the most simple and obvious one, and while not entirely accurate, it is sufficiently so for the purposes of this article. By this method the population of the country or of any state, county or city may be found for any year between 1870 and 1890. But we cannot suppose that this method will give even approximately accurate results between 1860 and 1870, because the rate of increase during the Civil War cannot have been as great as it was just after its close. Five states, Massachusetts, Rhode Island, New York, Iowa and Kansas, took a state census in 1865; and Michigan took one in 1864, from which the population of that state in 1865 may be estimated. These six states, embracing in 1860 over one-fifth of the population of the country, increased in five years, 1860-65, from 6,817,653 to 7,035,740, or only 3.2 per cent. At first thought it might seem fairest to apply this ratio to

<sup>1</sup> The Divorce Problem. Columbia College Studies in History, Economics and Public Law, No. 1. New York, 1891.

the whole country and compute the population of the United States in 1865 by assuming it to have been 3.2 per cent greater than the population in 1860. But it is to be observed that the last three of these states were growing with great rapidity through the decade, so that the total population of the six states increased, 1860-70, 29.1 per cent, while the increase of the whole country was only 22.7 per cent. On the other hand the population of the three eastern states slightly decreased, 1860-65, from 5,286,421 to 5,279,814. Hence it seems fairest to assume that the growth in the western states was neutralized by the loss of population in the southern and border states, and that the population of the country as a whole was the same in 1865 as in 1860. On this assumption the population for each year 1865-70 may be estimated in the same manner as for subsequent years.

After finding the total population for any year, the birth rate, death rate, marriage rate or divorce rate for that year may be computed in case the total number of births, deaths, marriages or divorces for that year is given by a registration report or otherwise. This is done by dividing the number of births, deaths, marriages or divorces for the year by the population for the year and multiplying the decimal thus obtained by 100, 1000 or 100,000. The result obviously expresses the number of births, deaths, marriages or divorces in each 100, 1000 or 100,000 of the population, provided that these changes are distributed with entire uniformity, an assumption never more than approximately correct. The advantage derived from such a computation is that it makes unnecessary further consideration of differences in population. It thus renders easy a comparison of the amount of marriage or divorce in communities or states widely different in their populousness, as well as within the same community or state for different years. In the following pages the number 1000 has been uniformly employed as the basis of the rates except for divorce, where, in order to avoid decimals, 100,000 has been substituted. In some cases the graphic method of presenting results or illustrating relations has been used, as easier of apprehension than columns of figures.

*Marriage Statistics.*

Only in five states, Vermont, Massachusetts, Rhode Island, Connecticut and Ohio, and in the District of Columbia, can the number of marriages be obtained with approximate completeness for each one of the twenty years.<sup>1</sup> To these may be added Illinois, where the records since the Chicago fire are apparently complete. Any results that may be obtained from an examination of these states or parts of them are hardly to be regarded as applicable south of the Ohio or west of the Mississippi, where the conditions are widely different.

*How does the marriage rate in these states compare with the rate in European countries?* The following table gives the number of persons marrying to every thousand of population in several European countries<sup>2</sup> and in these states for the year 1876, the mean of the twenty-year period.

*Marriage Rates in 1876.*

|                     |      |                        |      |
|---------------------|------|------------------------|------|
| Hungary . . . .     | 19.8 | District of Columbia . | 20.0 |
| German Empire . .   | 17.0 | Rhode Island . . .     | 17.8 |
| England and Wales . | 16.6 | Ohio . . . . .         | 17.5 |
| Austria . . . . .   | 16.2 | Illinois . . . . .     | 17.1 |
| Italy . . . . .     | 16.2 | Vermont . . . . .      | 15.9 |
| France . . . . .    | 15.8 | Massachusetts . . .    | 15.4 |
| Scotland . . . . .  | 15.0 | Connecticut . . .      | 13.2 |
| Ireland . . . . .   | 10.0 |                        |      |

Although no trustworthy conclusions in detail can be drawn from a single year, and although the pressure of the hard times in 1876 was probably somewhat more influential in the United States than in Europe in lowering the marriage rate, yet the general conclusion I believe to be warranted, that in the north-eastern and north-central states the average marriage rate is only slightly higher than the average rate in Europe; and that if we except Ireland on the one side, and Connecticut on the

<sup>1</sup> Report, p. 129.

<sup>2</sup> The figures for the European states are derived from the appendix to von Oettingen's *Moralstatistik*, third edition, pp. i-iv.

other, as either abnormal or imperfectly reported, the variations from this average rate are not very much wider on one side of the Atlantic than they are on the other.

*Does the marriage rate in this country show any tendency to change?* In most European countries the marriage rate has somewhat decreased in the past twenty years. A similar falling off is apparent in those states of this country about which the facts are obtainable. The following table gives the marriage rate for the first and the last year reported and the decrease.

*Decrease of the Marriage Rates of Certain States in Twenty Years.*

|                                 | Marriage Rate<br>in 1867. | Marriage Rate<br>in 1886. | Decrease. |
|---------------------------------|---------------------------|---------------------------|-----------|
| Vermont . . . . .               | 17.8                      | 15.6                      | 2.2       |
| Massachusetts . . . . .         | 21.6                      | 18.0                      | 3.6       |
| Rhode Island . . . . .          | 24.4                      | 17.6                      | 6.8       |
| Connecticut . . . . .           | 19.5                      | 15.8                      | 3.7       |
| District of Columbia . . . . .  | 33.3                      | 20.7                      | 12.6      |
| Ohio . . . . .                  | 23.8                      | 16.4                      | 7.4       |
| Illinois <sup>1</sup> . . . . . | 23.6                      | 17.7                      | 5.9       |

As there has been some decrease in every case, it is fair to presume that the same is true of the other states adjacent to these. It might be objected that the rate in 1867 was probably increased by the celebration in that year of some marriages which would have occurred earlier had they not been postponed by the war. But a comparison of the rates in these states for each year of the twenty confirms the conclusion indicated by the table above, that there has been a general though irregular downward tendency through the twenty years.

*Is the decrease of marriage more marked in the cities or in the country?* It is difficult to find a clear and general answer in the figures. The state of Ohio makes no returns by counties, and hence no comparison between city and country is there possible. In Massachusetts I have selected counties containing almost no large city, and have compared their

<sup>1</sup> Exclusive of Cook County, containing Chicago, in which the records were destroyed in 1871.

average marriage rate with that of Suffolk County (containing Boston). In Connecticut I have compared the average marriage rate of the three counties which contained in 1890 the eight largest cities, with the average rate of the other five counties of the state.

*Decrease of Marriage Rates in Urban and Rural Districts Compared.*

DISTRICTS MAINLY RURAL.

|                                      | Marriage Rate<br>in 1867. | Marriage Rate<br>in 1886. | Decrease. |
|--------------------------------------|---------------------------|---------------------------|-----------|
| Vermont . . . . .                    | 17.8                      | 15.6                      | 2.2       |
| Massachusetts (7 rural counties)     | 19.9                      | 16.1                      | 3.8       |
| Connecticut (5 rural counties)       | 19.6                      | 15.1                      | 4.5       |
| Illinois (outside Cook Co., 1872-86) | 17.6                      | 17.7                      | 0         |

DISTRICTS MAINLY URBAN.

|                                 | Marriage Rate<br>in 1867. | Marriage Rate<br>in 1886. | Decrease. |
|---------------------------------|---------------------------|---------------------------|-----------|
| Rhode Island . . . . .          | 24.4                      | 17.6                      | 6.8       |
| Massachusetts (Suffolk Co.) . . | 26.7                      | 20.6                      | 6.1       |
| Connecticut (3 urban counties)  | 19.4                      | 16.1                      | 3.3       |
| Illinois (Cook Co., 1872-86)    | 31.9                      | 23.6                      | 8.3       |
| District of Columbia . . . . .  | 33.3                      | 20.7                      | 12.6      |

As Vermont contains no city with a population of 15,000 or over, the whole state has been treated as a rural district. In Rhode Island 77 per cent, and in the District of Columbia 83 per cent, of the population were classed as urban by the census of 1880; accordingly both are treated as urban in the table. The general result of this comparison is to indicate that the decrease in the marriage rate has been somewhat greater in cities than in the country. The exception in the case of Connecticut may be due to the imperfect registration of marriages in that state, and to the fact that omissions have been more numerous in the urban counties. The rural rate is about normal, while the urban rate is very low.

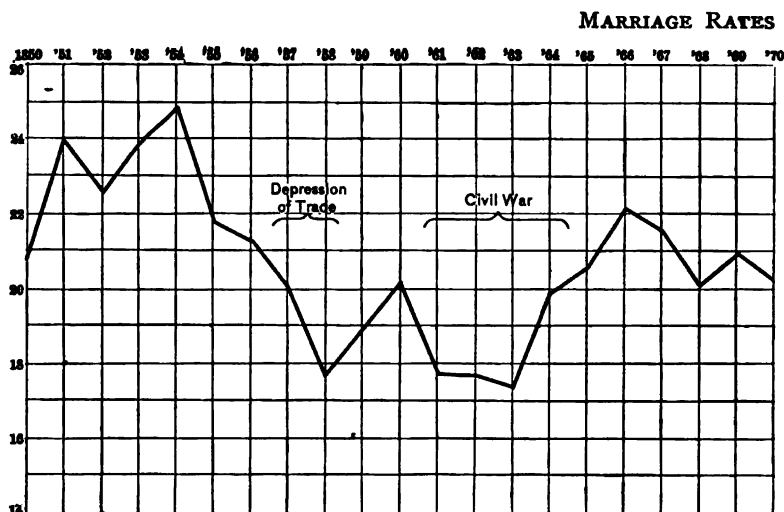
*Is any change occurring in the average age at which marriage is contracted?* No suggestion of an answer to this question has been found except in Massachusetts, where the average age of the parties is reported. As the main significance

attaches to the age at which people enter upon marriage, I give here only the average age of those who married for the first time.

*Average Age of Marriage in Massachusetts.*

|                           | 1871. | 1890. | Increase. |
|---------------------------|-------|-------|-----------|
| Bachelor grooms . . . . . | 26.3  | 27.2  | .9        |
| Maiden brides . . . . .   | 23.5  | 24.3  | .8        |

*Does a study of the marriage rates reveal any causes of the changes that have occurred?* Such a study is more readily made by the aid of a diagram than from a column of figures. As we have reports of the marriages in Massachusetts for a long period of time and as that state is fairly typical of the part of the country to which our study is confined, I present here a diagram of the marriage rates in that state for the past forty years.<sup>1</sup>

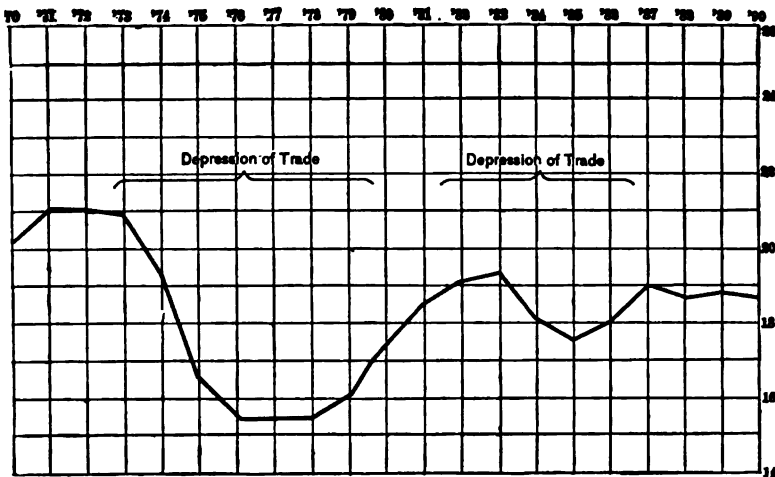


This diagram shows clearly the influence of the Civil War and of the three depressions of trade and industry in discouraging marriage. At the same time it illustrates the general downward tendency of the rate. Somewhat similar but less marked fluctuations are shown in Rhode Island and Connecticut for the period since the war. On the other hand, in the

<sup>1</sup> Compiled from Mass. Registration Report, 1889, p. 272 ; 1890, p. 245.

predominantly agricultural state of Vermont there is almost no trace of any influence of the depression of trade. This suggests that the hard times discouraged marriage more powerfully in commercial centers than in rural districts; and the inference is confirmed by a comparison of city and country rates in Massachusetts and Illinois. In the three years, 1873-76, the Suffolk County rate fell off 7.8, while the average rural county rate fell only 3.1. The Cook County rate fell, 1873-76, no less than 14.7, while in the rest of Illinois the fall in those years was only .7. In all these cases the influence of the hard times would be shown even more clearly if only first marriages were included. The marriage of bachelors is a much more sensitive barometer of the economic condition and hopes of a community than the whole number of marriages. With economic distress the proportion of marriages by bachelors sinks and that of

#### IN MASSACHUSETTS.



marriages by widowers rises. Thus in Massachusetts, in the three years, 1873-76, the number of bachelors marrying fell off 24 per cent, but that of widowers remarrying decreased only 11 per cent.

#### *Divorce Statistics.*

As before stated, the divorce rates given in this article represent the average number of persons divorced (not the

number of divorces) to every 100,000 of the population. Since the marriage rates give the average number of persons marrying, and not the number of marriages, to every 1000 of the population, it is obvious that the frequency of marriage and of divorce may be readily compared by moving the decimal point in the divorce rate two places to the left.

*How does the divorce rate in the United States as a whole compare with the rate in other countries?* The following table<sup>1</sup> will give an approximate answer to the question. As the number of divorces is quite generally increasing in Europe and this country, I have chosen the year 1886 instead of 1876 for comparison. Where no date is given, 1886 should be understood.

*Divorce Rates (including Separation) in Various Countries.*

|   |       |                              |        |
|---|-------|------------------------------|--------|
| Ireland . . . . .                                 | .28   | German Empire . . .          | 25.97  |
| Italy (1885) . . . .                              | 3.75  | France . . . . .             | 32.51  |
| England and Wales . .                             | 3.79  | Switzerland . . . .          | 64.49  |
| Canada . . . . .                                  | 4.81  | United States . . .          | 88.71  |
| Australia (including New<br>Zealand and Tasmania) | 11.14 | Japan <sup>2</sup> . . . . . | 608.45 |

The divorce rate of Japan is especially interesting, since I believe Japan is the only non-Christian country that collects and publishes its vital statistics. Whether it is even approximately a fair type of other non-Christian countries or whether its high rate is due to local and exceptional conditions, I am unable to state. In the year 1886 there were in Japan 315,311 marriages and 117,964 divorces, more than one divorce to every three marriages and more than four and a half times as many divorces as there were in the United States, although the population of Japan was only about two-thirds as great. But among the professedly Christian countries the United States has the largest divorce rate.

<sup>1</sup> The data from which these rates have been computed for European countries are mainly found in the valuable appendix to the Report on Marriage and Divorce. Those for Australia have been kindly furnished me by T. A. Cogan, government statistician of New South Wales.

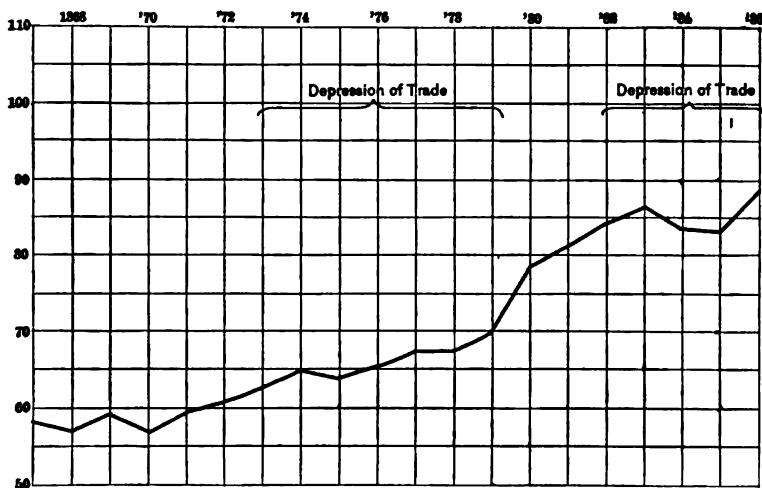
<sup>2</sup> *Résumé Statistique de l'Empire du Japon* (Tokio, 1891), pp. 10, 17.



*What change, if any, is taking place in our divorce rate?*

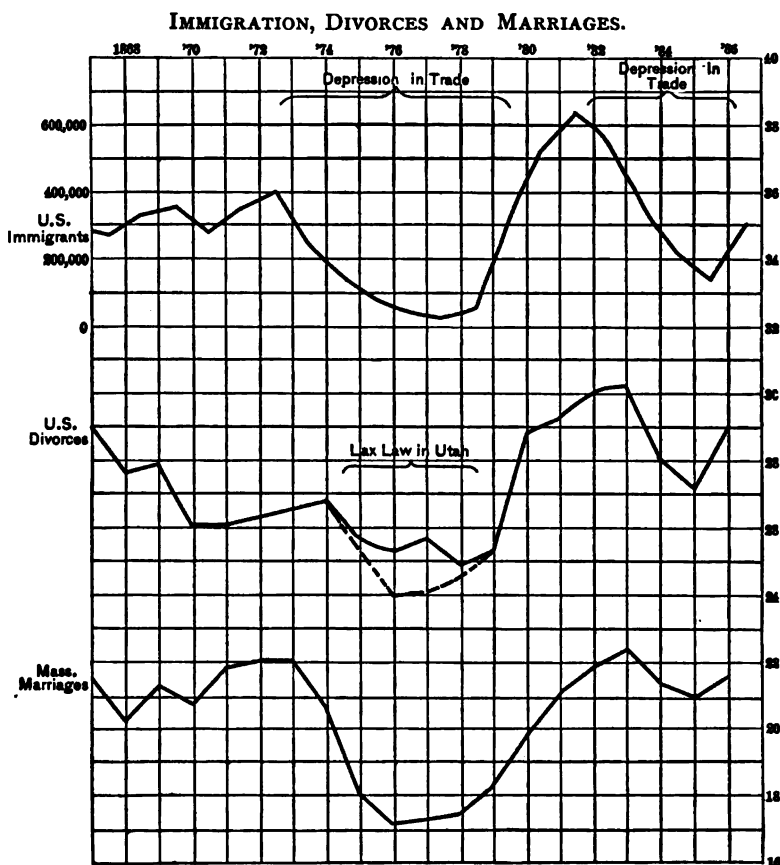
This question may be most intelligibly answered by the following diagram expressing the divorce rate of the United States for each of the twenty years, 1867-86, in the form of a curve, or more accurately, a broken line. The amount of divorce to every 100,000 of the population for each year is indicated by the distance from the bottom of the diagram to the broken line, and the prevailing upward tendency of the line expresses the gradual rise in the divorce rate. In only five of the nineteen cases does the line descend. This shows that in only five years was the rate lower than it had been the year before, while in fourteen cases there was an increase. And the average annual decrease in these five years was markedly less than the average annual increase in the fourteen years.

DIVORCE RATES IN THE UNITED STATES.



*May any causes influencing the divorce rate be determined from the figures?* A study of the rates for the years of commercial depression will show that the increase of divorce in those years was checked or turned into a decrease. To show how closely the divorce curve of the United States and the marriage curve of Massachusetts correspond, they should be placed side by side. But even then the similarity

of the two curves in details is obscured by the fundamental difference that the general trend of the marriage curve is downward and that of the divorce curve upward. For purposes of comparison this difference may be eliminated on the assumption that the complex forces tending to decrease marriage and the complex forces tending to increase divorce were uniform in their action throughout the twenty years. The effect of applying such an assumption is practically so to change the curves that the ends of each shall lie in the same



horizontal line, while the variations from year to year are but little affected. The above diagram presents to the eye the curves thus altered. For confirmation the curve of immigra-

tion to the United States, also changed from an ascending to a horizontal curve, has been added to the others. As the year for which the immigration is reported ends June 30th, the angles in the immigration curve have been placed midway between the years.

-In the divorce curve it will be seen that two rates are given for each of the four years 1875-78. An explanation of this will be offered later. Suffice it to say at present that between 1874 and 1876 the decrease of the divorce rate would probably have been greater than is indicated by the unbroken line, had it not been for the number of divorces granted in Utah in those years under a lax local law, and that the limit of decrease without that law has been found and is indicated by the dotted line. But for the Utah divorces it is practically certain that the divorce curve of the country for those years would have lain somewhere between the two limits, one expressing the divorce rate actually found and the other what that rate would have been had no divorces been granted in Utah to parties residing at a distance, *i. e.* in a non-adjacent state or territory.

The general similarity of the three curves is so marked that one is almost compelled to admit that in large measure they are influenced or controlled by the same forces. Especially clear is the great influence of the depression in trade from 1873 to 1879 and the slighter depression from 1882 to 1886. The relation between the United States divorce curve and the Massachusetts marriage curve is quite remarkable. From 1870 to 1871 the adjusted marriage curve rose while the divorce curve fell slightly. The influence of the panic of 1873 was felt the following year in diminishing the number of marriages in Massachusetts, but not till 1875 was it shown in the divorce rate. It should be remembered, however, that a divorce speaks from the date of the decree and not from the date the suit is begun. The decrease of decrees entered in 1875, therefore, would very probably correspond to a decrease of suits begun in 1874. The adjusted divorce curve fell between 1877 and 1878 while the marriage curve rose. This may be explained

by the repeal of the lax Utah law in February, 1878. With these three exceptions, two of which, I believe, are only apparent, the two curves uniformly ascend and descend together and reach their maxima and minima in the same years. The inference is irresistible. Depressions in trade have had a tendency to decrease divorces as well as marriages. In the great mass of the population they have discouraged change, have compelled men and women "in whatsoever state they were, therewith to be content," or at least to abandon or postpone the idea of change.

This influence of commercial depressions on the divorce rate has never before been suggested, so far as I am aware. It is, indeed, somewhat doubtful whether it exists in European countries. In England, at least, in the years in which the number of marriages has been diminished by hard times, the number of divorces has not fallen off, but rather increased. In 1879 and 1885 the divorce rate in England and Wales was higher than for any one of the other eighteen years, while in these two years and in 1886 the three lowest marriage rates of the period were presented. The expense and delay involved in procuring a divorce there are so great that only somewhat wealthy persons can go into court, and they do not feel so severely the burden of a financial crisis. This conjectural explanation derives some support from the fact which a French statistician of eminence<sup>1</sup> claims to have proved, that such periods of distress in Great Britain, while checking marriage among the poor, are attended by an increase of marriage among the rich. This difference between the effect of hard times in England and in the United States, together with the very rapid increase of divorce among the Southern negroes, and the fact that only about one wife in six of those obtaining divorces receives any alimony, are among the indications that divorce has become very frequent and perhaps most frequent among our lower middle classes, and has reached for woe a lower stratum than perhaps anywhere in Europe.

<sup>1</sup> See *Dictionnaire Encyclopédique des Sciences Médicales*, article "Grande Bretagne," by Dr. L. A. Bertillon, § 32.

*Is divorce more common in cities or in the country?* To this question an unhesitating answer may be made. Almost everywhere in this country the divorce rate of a large city is higher than the rate in the neighboring rural districts. The evidence of this statement may be most conveniently presented in connection with the discussion of the following topic.

*Is the difference between city and country divorce rates increasing or decreasing?* In the study of this question I have selected the following states, either as containing large cities or as fairly typical of the part of the country in which they lie: Massachusetts, New York, Pennsylvania, Georgia, Ohio, Illinois, Missouri and California. As the Cincinnati records have been lost, Cleveland, the second city of Ohio, has been compared with the rest of the state. It would be natural to choose New Orleans for the typical Southern city, but the Louisiana records are very imperfect, and hence I have selected Georgia, where the records seem to be excellent. In default of any single large city in that state, the average rate for the five counties in which are situated Atlanta, Augusta, Columbus, Macon and Savannah, its five largest cities, is compared with the average rate of the other counties. In New York State, the counties of New York and King's are treated as a single population center, whose average divorce rate is compared with the rate outside. So in Pennsylvania, the average rate of Philadelphia and Allegheny Counties, the latter including the cities of Pittsburg and Allegheny, has been compared with that of the rest of the state, and in Massachusetts the rate of Suffolk County, containing Boston, has been compared with the average rate of eight counties containing almost no large city. The results of the comparison are stated in tabular form on the next page. A minus sign prefixed to a number in the column headed "increase," indicates that the number should be read as a decrease. The Massachusetts rates cannot be compared with those of the other states, because in the former the base is different and more accurate, *viz.*, 10,000 married couples rather than 100,000 people.

*Increase of Divorce Rates in City and Country in Twenty Years.*

| STATE.         | City Divorce Rates. |                    | Country Divorce Rates. |       | Increase in Cities in Twenty Years. | Increase in the Country in Twenty Years. |
|----------------|---------------------|--------------------|------------------------|-------|-------------------------------------|--|
|                | 1867.               | 1886.              | 1867.                  | 1886. |                                     |  |
| Massachusetts  | 34.4                | 42.3               | 16.7                   | 29.6  | 7.9                                 | 12.9                                     |
| New York . .   | 59.8                | 35.6               | 29.3                   | 35.8  | — 24.2                              | 6.5                                      |
| Pennsylvania . | 29.0                | 57.4               | 39.1                   | 43.3  | 28.4                                | 4.2                                      |
| Ohio . . .     | 132.5               | 164.1 <sup>2</sup> | 78.2                   | 99.1  | 31.6                                | 20.9                                     |
| Illinois . . . | 255.6 <sup>1</sup>  | 182.8              | 109.7                  | 134.7 | — 72.8                              | 25.0                                     |
| Georgia . . .  | 29.5                | 64.1               | 22.2                   | 34.1  | 34.6                                | 11.9                                     |
| Missouri . .   | 87.9                | 134.7              | 45.0                   | 91.1  | 46.8                                | 46.1                                     |
| California . . | 112.9               | 288.8              | 79.9                   | 154.5 | 175.9                               | 74.6                                     |

Of course no conclusions can be drawn from only two years unless they are fair examples of the general trend. So in each case the rate has been computed for every year of the twenty, and it is believed that the foregoing are trustworthy indications of the variations that have occurred in the interim. The table shows that in Pennsylvania, Ohio, Georgia and California the increase of divorce has been more rapid in city than in country; that in Missouri the rate of increase has been practically the same in the two regions; while in Massachusetts, New York and Illinois the increase has been more rapid in the country. It is noteworthy that New York, Brooklyn and Chicago have shown a marked decrease of divorce rate in twenty years, the rate in Chicago in 1886 being not very much higher than in Cleveland and much lower than in San Francisco.

The table also shows how generally the city rate is higher than the country rate. In only two of the sixteen instances does the city rate fall below that of the rural districts, and if we extend our observation over the twenty years for each of these eight states, it appears that in only nine of the one

<sup>1</sup> This is for 1872, as no earlier record is extant.

<sup>2</sup> This is for 1885, since the rate in 1886 was abnormally and inexplicably low, lower than for any other year of the twenty, so that I am forced to doubt the completeness of the record.

hundred and sixty instances does the city rate fall below the country rate. If these be accepted as fair types of the country at large, we may say that in about ninety-five per cent of the cases the divorce rate of a large city is greater than that in the other counties of the state.

*To what extent can legislation be shown to have influenced the divorce rate?* In the recent study of the divorce question already cited I examined the evidence offered by Mr. Wright<sup>1</sup> to show that legislation had influenced the divorce rate in fourteen states and territories and came to the conclusion that the evidence was insufficient to prove a marked influence of legislation in the majority of these cases. In five the evidence failed when tested; in five others the influence appeared on scrutiny to be slight or temporary; in two the evidence could not be analyzed in detail; so that in only two was the influence of law clear and considerable. In the light of some press criticisms and of newly discovered evidence, this conclusion requires some modification in respect to Utah and Massachusetts.

*Utah.* This territory formerly had a very lax divorce law, allowing decrees to issue to persons who merely declared an intention to become residents and alleged incompatibility of temper as a ground. The rapidity, secrecy and cheapness with which a divorce decree of seeming validity could be obtained by non-residents led to the flooding of the Utah courts in some five counties with cases sent thither by lawyers doing business in Eastern cities. In 1878 the law was amended and the number of divorces in the territory fell from 914 in 1877 to 122 in 1879. This seemed to indicate that the amended legislation had reduced the annual number for the whole United States by about 800. My reason for questioning that conclusion, however, was that coincident with the increase of divorce in Utah in 1875, there was a decrease in Chicago and New York, from which cities most of the Utah cases were sent; and coincident with the repeal of the Utah law there was an increase in the number of

<sup>1</sup> Report, pp. 150-157.

divorces in those cities. Add to this the fact that both New York State and Illinois, outside the largest cities, showed a steady increase during the years of numerous Utah divorces, and the evidence seemed convincing that we had to do with a deflection of the divorce current rather than with a decrease of its volume.<sup>1</sup>

At that time I was ignorant of the influence of hard times in checking divorce—a fact discovered by subsequent study—and ignorant also, of course, that this influence is more potent in large centers than in rural districts. These two discoveries throw new light on the question. The decrease of the divorce rate in New York City and Chicago after 1874 may be due either to the hard times or to the sending of divorce cases to Utah; the increase of the divorce rate after 1878 may be due either to the repeal of the Utah law or to the revival of business. I am disposed to believe that both influences were at work, but that the depression of business and the reduction of wages were far more influential than the deflection of the divorce current to the Western territory.

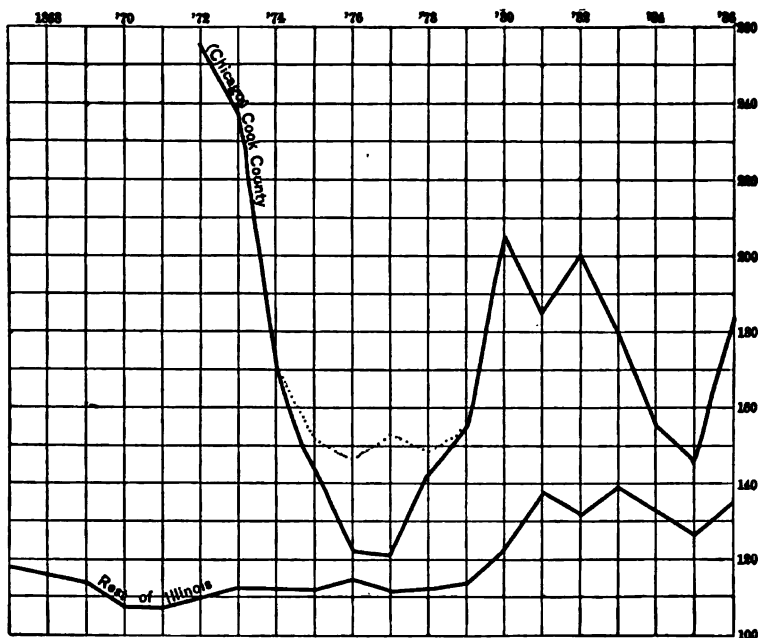
Mr. Wright has kindly furnished me with an unpublished statement of the places in which the parties divorced in Utah were married. Twice as many were married in New York as

<sup>1</sup> It should be noticed that these Utah decrees have in several instances come before the courts outside that territory for construction, and in accordance with a well-settled principle of law, have been uniformly held null and void for want of jurisdiction over the parties. For example, a physician living in Minnesota obtained a divorce in Utah in 1876, and in the belief that he was thereby released from the ties of his former marriage, a belief confirmed, as he averred, by competent legal advice, he speedily married again. A year later he was indicted for polygamy. On the trial the Utah decree was refused admission as evidence, the court holding that he must be presumed to have known the law and to have been aware that a decree issuing from a court without jurisdiction was invalid, and he was found guilty. He was sentenced to the state prison for two years, and on appeal to the supreme court of Minnesota the judgment and sentence were unanimously affirmed. *State vs. Armington*, 25 Minn. 29. Similar decisions involving these Utah decrees have been reached on criminal trials in New York, Indiana and Iowa, and in civil suits in Massachusetts, Kansas and Tennessee. The earliest, I believe, of these decisions was reached in 1877, so that they could hardly have exerted much influence in reducing the number of applications before the law was changed a year later.



in any other state of the Union. This may be plausibly explained as due in great measure to the stringency of the New York law, which allows divorce only for one cause. Hence there would be in this state a great number of deserted or cruelly-treated husbands or wives, in addition to those merely discontented with their choice, and many of these might be allured by the advertisements of the divorce lawyers. The second state on the list was Illinois. As its divorce law is lax, a majority of those residing there and seeking divorce in Utah might have obtained a divorce under Illinois law, though less readily, secretly or cheaply. For the purposes of illustration assume that all the divorces of parties married in Illinois and

CITY AND COUNTY (ILLINOIS) DIVORCE RATES.



divorced in Utah were granted to residents of Chicago; or, what amounts to the same thing, assume that the number of such divorces to persons not residing in Chicago was equal to the number granted to residents of Chicago who had been married outside of Illinois. Assume also that if all these divorces had not been granted in Utah they would have been granted in the

local court. On these assumptions the divorce curves of Cook County and of the rest of the state may be constructed both as they actually were and as they would have been had the Utah divorces of parties married in Illinois all been granted in Cook County. These curves are shown by the preceding diagram.

Note the very rapid decrease of the divorce rate in Chicago from 1872 to 1876, probably due in large measure to industrial depression. Note that this decrease is confined to the city and does not appear in the rest of the state. Note also the influence of the possible diversion of divorces to Utah in accentuating that decrease. It is probable that some but not all of the divorces of Illinois marriages granted in Utah would have been obtained in Cook County if the cases had not been sent west. If this is so, the true divorce curve of Cook County, as it would have been but for the advantage taken of the Utah law, would be somewhere between the unbroken line, indicating the curve of the actual divorce rate, and the dotted line, indicating the rate found by adding to the divorces granted in Chicago in each year the divorces granted that year in Utah to parties married in Illinois. Attention may also be called to another inference from the diagram, that the divorce rate in Chicago has decreased since the fire, while the rate in the rest of Illinois has somewhat risen.

*Massachusetts.* In this state there was a noticeable increase of divorce between 1872 and 1874, which Mr. Wright stated<sup>1</sup> was probably due to a change of law in 1873, whereby the period of desertion necessary to give ground for divorce was reduced from five to three years. To this opinion I objected that such a change could have increased only the number of divorces for desertion, whereas in fact the increase of divorces granted on other grounds in the two years had been relatively much greater—92 per cent as compared with 69 per cent. Hence some other reason for the increase must be sought. In an able and suggestive criticism of my discussion<sup>2</sup> Dr. Dike says:

<sup>1</sup> Report, p. 154.

<sup>2</sup> Legislation and Divorce, *N. Y. Evening Post*, July 2, 1891. I am much indebted to this letter; not so much, however, for any new facts it brought out as for the stimulus it gave me to reopen the question of the influence of legislation on divorce.

Mr. Wright apparently overlooked in his statements of the influence of legislation in Massachusetts—what he had shown in his state report of 1880—the fact that four new grounds of divorce created in 1870 first affected the statistics in 1874 and made most of the increase of 92 per cent.

Here is a new cause suggested for the increase—a change of law, but one of more sweeping character than that of 1873. Yet I must insist upon the position previously taken, that no causal relation can be established by observing an effect and merely pointing out an antecedent phenomenon that may account for it. Not only must the cause and effect occur together, but when the cause is absent the effect must likewise disappear. Neglect of this principle seems to me a fundamental error underlying much of Mr. Wright's discussion of the influence of legislation on divorce, and the same oversight occurs in Dr. Dike's reply. Dr. Dike gives a valid answer to my argument, but not, I think, to my conclusion. He shows that a sweeping change of law and an increase of divorces coincided in Massachusetts. But he does not consider the movement of the divorce rate at the same time in the adjacent states beyond the reach of this change of law. As a matter of fact, in every one of the eight other states from Maine to Pennsylvania inclusive, as well as in Massachusetts, the divorce rate increased from 1872 to 1874. Hence the increase in the latter state cannot be set down as due solely to the local change of law. The following table will present the facts concisely.

*Increase of Divorce in North Atlantic States, 1872-1874.*

|                         | Divorce Rate<br>in 1872. | Divorce Rate<br>in 1874. | Increase. |
|-------------------------|--------------------------|--------------------------|-----------|
| Maine . . . . .         | 133                      | 147                      | 14        |
| New Hampshire . . . .   | 123                      | 170                      | 47        |
| Vermont . . . . .       | 92                       | 110                      | 18        |
| Rhode Island . . . . .  | 194                      | 199                      | 5         |
| Connecticut . . . . .   | 162                      | 186                      | 24        |
| Massachusetts . . . . . | 44                       | 76                       | 32        |
| New York . . . . .      | 26                       | 31                       | 5         |
| New Jersey . . . . .    | 18                       | 22                       | 4         |
| Pennsylvania . . . . .  | 33                       | 37                       | 4         |

From this table it appears that the increase in Massachusetts, where there was a special local cause at work, is not conspicuously greater than the increase in three of the five adjacent states, New Hampshire, Vermont and Connecticut, where no local cause is alleged. On the basis of these figures it seems to me impossible to maintain that the increase in Massachusetts was certainly or even very probably due to the local cause, unless we are able to discover what general influence caused the increase in the other states, and to show that this was not present or worked less powerfully in Massachusetts. If any quantitative estimate of the influence of the change of law in Massachusetts is to be derived from the figures, it may perhaps be done most fairly by the following method. The other five states of New England have together a population about equal to that of Massachusetts, and exhibit a general similarity to that state in social and economic conditions. Comparing them as a unit with Massachusetts for the two years under consideration, we find that they showed an increase of 25 in their average divorce rate, while that of Massachusetts increased 32. This excess of seven may be a rough approximate indication of the increase in Massachusetts due to the local cause.

*May the amount of interstate migration for the purpose of securing divorce be approximately estimated?* One of the main services that statistics can render to social science is to make possible a quantitative measurement of facts that without statistics can be only qualitatively distinguished. This must be my excuse for suggesting for the quantitative determination of the current of interstate migration to secure divorce, a method which is admitted to be imperfect and to give only roughly approximate results, but which is believed to be correct in theory and the best method possible with our limited data. Only two illustrations will be given, since these will suffice to illustrate the method, and that is all that is here desired.

It is often said that natives of New York, where the law is strict, resort to Rhode Island to obtain divorces.<sup>1</sup> In

<sup>1</sup>"Our statute . . . is so much more favorable to easy divorce that instances are not rare of persons coming to the state and remaining the time required to

1870 there were 1,073,572 natives of New York State living in other parts of the Union, and of these 3932 were living in Rhode Island. That is, of all the natives of New York State who in 1870 were living beyond the limits of the state but within the limits of the country, .36 per cent resided in Rhode Island. The migration of the natives of New York to other parts of the Union may be conceived as a movement due to the attractive force exerted upon them by the advantages offered or believed to exist elsewhere; and the proportion of these persons going to any particular state or territory may be conceived to measure the attractive force of that state or territory in terms of the total force. The attractive force of Rhode Island for natives of New York in 1870 was, then, .36 per cent of the attractive force of the whole country outside of New York. In 1880 .54 per cent of the natives of New York residing without that state and within the country were living in Rhode Island, or in other words the attractive force of Rhode Island had risen to .54 per cent of that of the whole country. Now let us compare with these figures the number of persons going to Rhode Island from New York to obtain divorce. The number for each year is not given, but we are told<sup>1</sup> that in the twenty years ninety-seven divorces were granted in Rhode Island to parties who had been married in New York. We know also<sup>2</sup> that in the whole country outside of New York in the twenty years 9,205 divorces were granted to parties who had been married in New York State. That is, of all the divorces of New York marriages granted outside of that state, 1.05 per cent were granted in Rhode Island. Now if what we may call the current of legitimate migration from New York to Rhode Island was somewhere between .36 per cent and .54 per cent of the current from New York to the whole

obtain standing in our courts." — Governor's Message for 1883. Again: "I trust that our laws will be so amended that at least Rhode Island may no longer have the unenviable reputation it now has in respect to divorce and may no longer be a resort from neighboring states of parties who cannot be divorced by the laws of their own state." — Message for 1884.

<sup>1</sup> Commissioner Wright's Report, p. 194.

<sup>2</sup> *Ibid.*, p. 196.

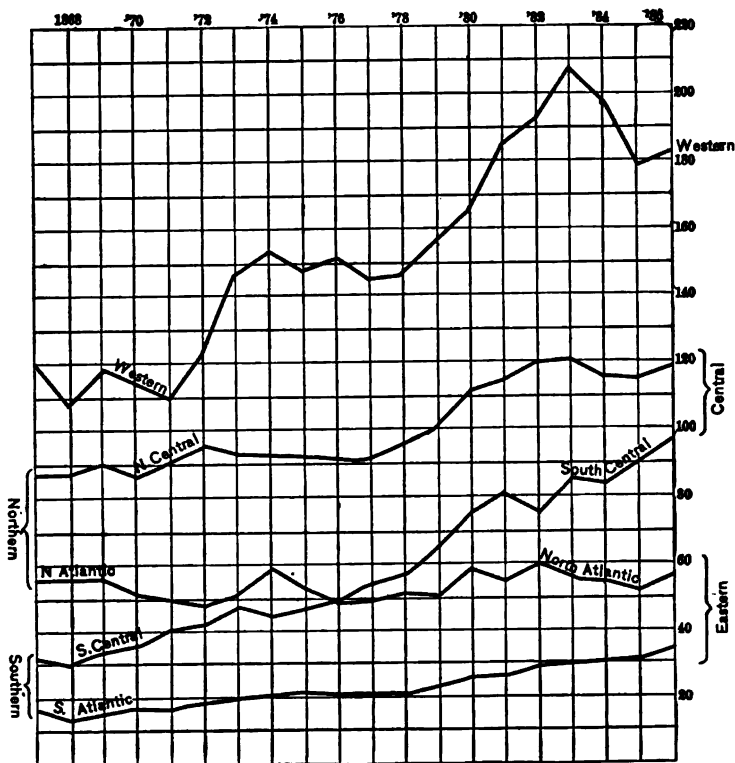
country, and if the current of divorce migration to Rhode Island was about 1.05 per cent, the difference between these two may be held to express the amount of migration guided by the desire to obtain divorce. In a general way this analysis would indicate that from thirty-five to fifty of the ninety-seven cases in which Rhode Island divorces were granted to parties married in New York were cases of *bona fide* migration, in which divorce merely followed change of residence, without serving as a motive for it. While in any single instance like the foregoing such a course of reasoning may result in erroneous conclusions, I firmly believe that in the great majority of cases it would give an approximation to the truth and be far better than ignorance. It is an amplification and, as I think, an improvement of the method followed by Mr. Wright.

The application of this method may be made to another instance in which the data have been published. New York citizens are said to move to Pennsylvania in order to obtain divorce. How largely is this true? The attractive force of Pennsylvania on natives of New York, as measured by the number residing in the former state, was in 1870 8.2 per cent and in 1880 8.3 per cent of the force exerted by the whole country. On the average during the twenty years the attractive force of Pennsylvania on persons married in New York and obtaining a divorce elsewhere was 8.6 per cent. If the difference roughly expressed the migration for the purpose of obtaining a divorce, we may say that probably at least 700 of the 765 persons who were married in New York and divorced in Pennsylvania went there with the motives of ordinary immigrants and not to secure divorce.

*Is it possible to trace a geographical distribution of divorce?* In the population bulletins of the United States census the country is divided into five groups. The lines of separation are partly geographical and partly social and economic. Two lines are geographical, following approximately the two great mountain systems and dividing the country into an eastern, a central and a western group of states. The third line is social

and economic, marking the difference between the former slave states and the free states. Each of the five groups of states thus formed, the north Atlantic, the south Atlantic, the north central, the south central and the western, is treated for many purposes as a whole and as such compared with the others. This method may be profitably employed in studying the divorce statistics. Accordingly I have estimated the population of each group, found the number of divorces granted in it for each of the twenty years, and computed the average divorce rate. The result is most clearly set forth in the following diagram.

DIVORCE RATES IN GROUPS OF STATES.



From this diagram it will be seen that the states from Delaware to Florida have uniformly had the lowest divorce rate in the country. At the start the second group in freedom

from divorce was the southern states of the Mississippi valley. But the rate in that group has increased very rapidly, passing the north Atlantic group in 1876 and rapidly gaining on the north central, while for the last two years shown its rate was higher than that for the country as a whole.<sup>1</sup>

The north Atlantic group of states, from Maine to Pennsylvania inclusive, shows no increase of divorce rate in the twenty years; in other words the growth of divorce has just kept pace with the growth of population. If we divide this region into two groups, we find that in New England the divorce rate has slightly decreased in twenty years, while in New York, New Jersey and Pennsylvania as a whole it has slightly increased, the two offsetting each other.

Perhaps the most striking fact illustrated by the diagram is the high divorce rate and its rapid increase in the western group of states. At the beginning of the period the two southern groups were most free from divorce, then came the two northern groups, while the western group had the highest rate; but for the last eleven years the two eastern groups were most free from divorce, then came the two central groups and finally the western group. Disregarding for a moment the western group, we may say that for the period 1867-75 inclusive the difference between south and north was greater than that between east and center; but for the period 1876-86 inclusive the reverse was true, and the average difference between east and center was greater than the average difference between south and north. In the single matter of divorce rate the differences between south and north have been dwindling since the war, while the differences between east, center and west have been very rapidly increasing. Perhaps this change may be most clearly brought before the eye by combining the four groups east of the Rocky Mountains, first into two groups of southern and northern states and then into two groups of eastern and western states, for the first and the last years of the period, marking the increase in each case and the differences between south and

<sup>1</sup> Compare diagram, p. 79.



north and between east and west at the beginning and end of the period.

*Comparison of Divorce Rates.*

|                    | Southern States. | Northern States. | Difference. |
|--------------------|------------------|------------------|-------------|
| 1867 . . . . .     | 24               | 71               | 47          |
| 1886 . . . . .     | 68               | 92               | 24          |
| Increase . . . . . | 44               | 21               |             |

|                    | Eastern States. | Central States. | Difference. |
|--------------------|-----------------|-----------------|-------------|
| 1867 . . . . .     | 43              | 65              | 22          |
| 1886 . . . . .     | 49              | 113             | 64          |
| Increase . . . . . | 6               | 48              |             |

It thus appears that the difference between south and north has decreased nearly one-half in twenty years, *i.e.* from 47 to 24, while the difference between the eastern and the central states has nearly trebled, from 22 to 64. Or if we look at the changes in the rate rather than at the differences, the increase in the south has been more than twice as rapid as in the north, and that in the central states no less than eight times as rapid as in the eastern.

A general conclusion to be drawn from this is that since the war the conditions of family life in southern and northern states, so far as they find expression in the divorce rate, have been growing more similar, while the conditions at the east and at the west have been growing more diverse; in other words, that in this respect the *ante bellum* divergence between north and south has been changing into a divergence between east and west.

*Can any cause be suggested for this growing difference between the divorce rates of east and west?* It may be worth while to state my own hypothesis. All over the civilized world we find two great currents of migration in progress, one from the rural districts to the cities and the other from long settled districts to newly opened territory. Now it is a general fact that the divorce rate is higher where either one of these currents stops, than at its source. Thus in Europe the city divorce rate is from three to five times that of the surrounding

country, and in the United States about 95 per cent of the cases studied show the city rate to be likewise higher. So, too, in the Australian colonies, settled almost entirely from Great Britain and Ireland, and governed in such matters by English law, the divorce rate is several times as high as it is in the mother country. Each of these two streams of migration seems to involve a process of natural selection whereby the most energetic and self-reliant, and also the most discontented, dissatisfied and even criminal classes are sifted out and drawn off to the new homes. Among these the proportion of persons desiring divorce would be much greater than among those remaining behind. The prevalence of divorce in our far western states would thus be comparable to the frequent cases of lynch law in that region, both being natural though lamentable expressions of the large proportion of lawless elements in those states.

WALTER F. WILLCOX.

## THE INFLUENCE OF MACHINERY UPON EMPLOYMENT.

**I**N discussing the influence of machinery upon demand for labor we must distinguish its effects upon (1) the number of workers employed; (2) the regularity of employment; (3) the skill, duration, intensity and other qualities of labor.

### I. *Upon the Number of Workers.*

The motive which induces capitalist employers to introduce into an industry machinery which shall either save labor by doing work which labor did before, or assist labor by making it more efficient, is a desire to reduce the expenses of production. Looked at from the standpoint of a given quantity of production, a new machine always displaces and throws out of employment a certain amount of labor, assuming that the labor of producing the new machines and of working them is paid at no lower rate of remuneration than the labor which is displaced. What is meant, then, by the statement so frequently made, that machinery gives more employment than it takes away — that its wider and ultimate effect is not to diminish the demand for labor? If we set against the displaced labor in a given business the labor of producing, maintaining and working the new machines, there must be still a net diminution in employment of labor; for otherwise no economy would be effected. This is of course beyond dispute. But, it is maintained, the economy afforded by labor-saving machinery in the expenses of production will, through competition of producers, be reflected in a lower scale of prices, and the fall of prices will stimulate consumption. When we add together the labor spent in producing the machinery to assist the enlarged production, the labor spent in maintenance and working of the same, and the labor of conveying and distributing the enlarged production, it will be

found that more labor is required under the new than under the old conditions of industry. So runs the argument.

If for convenience we omit all consideration of the probability that the economy in production will swell profits instead of reducing prices, the value of the argument evidently turns upon the effect of a fall of price in stimulating increased consumption. Now the problem how far a given fall in price will stimulate increased consumption is shown by Professor Marshall, in his interesting treatment of "flexibility of demand,"<sup>1</sup> to involve extremely intricate knowledge of the circumstances of each case and refined calculations of human motives. If we apply a similarly graduated fall of prices to two different classes of goods, we shall observe a widely different effect in the stimulation of consumption. A reduction of fifty per cent in the price of one class of manufactured goods may treble or quadruple the consumption, while the same reduction in another class may increase the consumption by only twenty per cent. In the former case it is probable that the ultimate effect of the machinery which has produced the fall in expenses of production and in prices will be a considerable increase in the aggregate demand for labor, while in the latter case there will be a net displacement. It is therefore impossible to argue *a priori* that the ultimate effect of machinery must be an increased demand for labor, and that the labor displaced by machinery will be directly or indirectly absorbed in forwarding the increased production caused by machinery.

Moreover the industrial history of a country like England can furnish no valuable data for a wider judgment of the case. The enormous expansion of production induced by the application of machinery in certain branches of textile industry during the first half of this century indisputably led to an increased demand for English labor in industries directly or indirectly connected with textile production. But in the first place this cannot be regarded as a normal result of a fall of prices due to textile machinery, but is largely attributable to an expansion in the area of consumption—the establishment

<sup>1</sup> Principles of Economics, bk. iii., ch. iv.

of vast new markets — in which greater efficiency and cheapness of means of transport played the most considerable part. Secondly, assuming that the more pressing needs of the vast body of consumers are already reached and satisfied by machine-produced textile goods, we are not at liberty to conjecture that any further cheapening of goods owing to improved machinery will have a correspondent effect upon consumption and the demand for labor. If England had been a self-contained country, manufacturing only for her own market, the result of machinery applied to textile industries would undoubtedly have been a considerable net displacement of textile labor, making all allowance for growth of population and increased domestic consumption of textile fabrics. The expansion of English production under the rapid development of machinery in the nineteenth century cannot be taken as a measure of the normal effects of the application of machinery.

What direct evidence we have of the effect of machinery upon demand for labor is very significant. Mr. Booth, in his *Occupations of the People*, presents an analysis of the census returns showing the percentages of the population engaged in various employments at decennial points from 1841 to 1881. If we turn to manufactures, upon which, together with transport, machinery exercises the most direct influence, we find that the aggregate of manufactures shows a considerable increase in demand for labor up to 1861, that is to say, in the time when English wares still kept the lead they had obtained in the world-market, but that since 1861 there is a considerable decline in the percentage of the population employed in manufactures. The percentages run as follows:

|      |   |   |   |      |
|------|---|---|---|------|
| 1841 | . | . | . | 27.1 |
| 1851 | . | . | . | 32.7 |
| 1861 | . | . | . | 33.0 |
| 1871 | . | . | . | 31.6 |
| 1881 | . | . | . | 30.7 |

If we take the staple manufactures, employing the largest number of workers, we shall find that for the most part they

show a rising demand for labor up to 1861, a stationary or falling demand after that date. The foundational industries — machinery and tools, ship-building, metal-working — whose demand for labor during the period 1841 to 1861 increased by leaps and bounds, still show a slightly increased proportion of employment, partly due to the rise since 1861 of a large export trade in machinery. Fuel, gas, chemicals and other general subsidiary trades offer a steady rise in proportionate employment. The textile and dyeing industries, on the other hand, showing an increased proportionate employment up to 1851, by which time the weaving industry was taken over by machinery, present a continuous and startling decrease in the proportion of employment since that year. A considerably smaller proportion of workers are employed in these trades than were employed in 1841. The dress-making industries show the same result, a continuous rapid decline of employment since 1851. The following are the percentages:<sup>1</sup>

|            | Textile and Dyeing. | Dress. |
|------------|---------------------|--------|
| 1841 . . . | 9.1                 | 7.8    |
| 1851 . . . | 11.1                | 10.3   |
| 1861 . . . | 10.2                | 9.8    |
| 1871 . . . | 9.3                 | 8.5    |
| 1881 . . . | 8.2                 | 8.1    |

This failure of demand for labor to keep pace in its growth with the growth of production in the main branches of the spinning and weaving industries is emphasized by Mr. Ellison. Comparing 1850 with 1878, he says:

In spinning mills there is an increase of about 189 per cent in spindles, but only 63 per cent in hands employed; and in weaving mills an increase of 360 per cent in looms, but only 253 per cent in operatives. This, of course, shows that the machinery has become more and more automatic or self-regulating, thus requiring the attendance of a relatively smaller number of workers.<sup>2</sup>

When all the subsidiary branches of textile industry are added, the results point still more conclusively in the same direction.

<sup>1</sup> Booth, *Occupations of the People*, pp. 68, 69.

<sup>2</sup> T. Ellison, *Cotton Trade of Great Britain*, p. 74.

|            | No. of Spindles. | No. of Looms. | No. of Operatives. |
|------------|------------------|---------------|--------------------|
| 1850 . . . | 20,977,817       | 249,627       | 330,924            |
| 1878 . . . | 44,206,690       | 514,911       | 482,903            |

The more recent statistics of Mr. Booth show that the relative diminution of employment in the textile industries has passed into an absolute diminution. The total number of operatives in textile and dyeing industries was :

|            |                      |
|------------|----------------------|
| 1851 . . . | 346,200              |
| 1861 . . . | 462,400              |
| 1871 . . . | 414,500              |
| 1881 . . . | 396,400 <sup>1</sup> |

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The significance of these figures in relation to the demand for labor receives further emphasis when the large and rapid displacement of male by female labor is taken into account. To this I refer later.

The branches of manufacture which show a large increase in the proportionate employment they gave in 1881, as compared with 1861, are printing and bookbinding, wood furniture and carriages, fuel, gas, chemicals and unspecified trades (chiefly connected with machinery). Machinery and tools, metals and ship-building, among the larger industries, show a small proportionate increase of employment.

From these facts two deductions may be made bearing upon the effects of machinery. First, so far as the aggregate of manufactures is concerned, the net result of the increased use of machinery has not been to offer an increased demand for labor keeping pace with the growth of the working population. Second, an increasing proportion of the manufacturing population is employed in the smaller industries, which are either subsidiary to the large industries or are engaged in providing miscellaneous comforts and luxuries.

When we turn from manufactures to other employments, we perceive that while manufactures, together with mining and building, employ about the same proportion of the working population as in 1851, agriculture offers a rapidly diminishing employment, descending from 20.9 per cent in 1851 to 11.5

<sup>1</sup> Occupations of the People, p. 10.

per cent in 1881. On the other hand, the proportion of the workers engaged in transport trades, in dealing and in industrial service has risen very largely.

|            | Transport. | Dealing. | Industrial Service. |
|------------|------------|----------|---------------------|
| 1841 . . . | 2.2        | 5.3      | 5.4                 |
| 1851 . . . | 4.1        | 6.5      | 4.5                 |
| 1861 . . . | 4.6        | 7.1      | 4.0                 |
| 1871 . . . | 4.9        | 7.8      | 6.0                 |
| 1881 . . . | 5.6        | 7.8      | 6.7                 |

To this we may add a large increase in the proportionate supply of public and professional service, rising from 3.6 per cent in 1841 to 5.6 in 1881.

When we look at these figures there can be no question that an indirect result of the increased production due to the application of machinery has been increased employment in distributing industries. It should, however, be clearly recognized that the direct effect of machinery upon these industries also is to diminish the proportionate employment of labor. A comparison of the two chief branches of the transport trade yields the same results. Machinery occupies a very different place in the railway from that which it holds in the steamship. The engine only indirectly determines and regulates the work of the majority of railway workers. Most of them are not tenders of machinery. Engineer, stoker and guard are alone in close, direct association with the machine. To them must be added those engaged in the workshops in construction and repair. Pointsmen and certain station officials come next in proximity to the machine; shunters and porters are also "tending machinery," though their work is more directly dominated by general business considerations. But are we to say that the army of plate-layers, navvies, *etc.*, engaged along the track are serving machinery instead of using tools? The work of ticket clerks and collectors is only governed by the locomotive in a very indirect way. Though the steam locomotive is the central factor in railway work, the bulk of the labor is skilled or unskilled work in remote relation to the machine. This explains why the growth of railway industry is not attended by



a diminishing proportion of employment. On the contrary, we find that railway employment increases faster than mileage and railway capital. The following figures illustrate the movement between 1860 and 1890 in railways of the United Kingdom:

| Year.      | Mileage. | Capital (paid up). | Operatives. |
|------------|----------|--------------------|-------------|
| 1851 . . . | —        | —                  | 25,200      |
| 1861 . . . | 10,865   | £362,327,338       | 53,400      |
| 1871 . . . | 15,376   | 552,661,551        | 84,900      |
| 1881 . . . | 18,175   | 745,528,162        | 139,500     |

But when we turn to the shipping trade, where a much larger proportion of workers are directly engaged with machinery, and trace the effect upon employment of the application of steam, the result is very different:

|            | Sailing Vessels<br>(tonnage). | Steamers<br>(tonnage). | Men on<br>Sailing Ships. | Men on<br>Steamships. |
|------------|-------------------------------|------------------------|--------------------------|-----------------------|
| 1850 . . . | 3,396,359                     | 168,474                | 142,730                  | 8,700                 |
| 1860 . . . | 4,204,360                     | 454,327                | 145,487                  | 26,105                |
| 1870 . . . | 4,577,855                     | 1,112,934              | 147,207                  | 48,755                |
| 1880 . . . | 3,851,045                     | 2,723,488              | 108,668                  | 84,304                |
| 1890 . . . | 2,907,405                     | 5,037,666              | 84,008                   | 129,366 <sup>1</sup>  |

If we take the period 1870–1890, during which there is an absolute shrinkage of sailing tonnage, we find that this shrinkage is accompanied by a less than corresponding diminution in employment. On the other hand, the tonnage of steamships has increased nearly fourfold, but has brought an increase of employment which is not quite threefold. This comparison of railway and shipping illustrates the degree of dominion exercised by machinery in the respective branches of transport industry.

<sup>1</sup> The aggregate effect of the change upon the employment of seamen is shown by the following figures, in which the aggregate tonnage of sailing and steam vessels is given:

|            | Tonnage.  | Men.    |
|------------|-----------|---------|
| 1850 . . . | 3,564,833 | 151,430 |
| 1860 . . . | 4,658,687 | 171,592 |
| 1870 . . . | 5,690,789 | 195,962 |
| 1880 . . . | 6,574,513 | 192,972 |
| 1890 . . . | 7,945,071 | 213,374 |

These facts and figures seem to support the following conclusions:

1. That along with the increased application of machinery to the textile and other staple manufactures there has been a decrease of employment relative to production.

2. That in the transport industries the increase of employment is in inverse proportion as machinery is introduced into the several branches as a dominating factor.

3. That the rapid diminution of agricultural employment is not compensated by any proportionate increase of manufacturing employment, but that the displaced agricultural labor finds employment in such branches of the transport and distributive trade as are less subject to machinery.

In the rough estimate of the effect of machinery upon employment, its influence upon English agriculture has been left untouched by reason of the inherent complexity of the forces which are operative. But it must not be forgotten that by far the most important factor in the decline of English agricultural employment is the transport machinery which has brought the produce of distant countries into direct competition with English agricultural produce.

So far, therefore, as the statistics of employments present a just register of the influence of machinery upon demand for labor, we are driven to conclude that the net influence of machinery is to diminish employment so far as those industries are concerned into which machinery directly enters, and to increase the demand in those industries which machinery affects but slightly or indirectly. If this is true of England, which, having the start in the development of the factory system, has to a larger extent than any other country specialized in the arts of manufacture, it is probable that the net effect of machinery upon the demand for labor throughout the industrial world has been to throw a larger proportion of the population into industries where machinery does not directly enter. This general conclusion, however, for want of exact statistical enquiries conducted upon a single basis, can only be accepted as probable.

## II. *Upon the Regularity of Employment.*

The influence of machinery upon regularity of employment has a twofold significance. It has a direct bearing upon the measurement of demand for labor, which must take into account not only the number of persons employed but the quantity of employment given to each. It has also a wider general effect upon the moral and industrial condition of the workers, and through this upon the efficiency of labor, which is attracting increased attention among students of industrial questions. The former consideration alone concerns us here. We have to distinguish : (1) the effects of the introduction of machinery as a disturbant of regularity of labor ; (2) the normal effects of machine production upon regularity of labor.

1. The direct and first effect of the introduction of machinery is, as we have seen, to displace labor. The machinery causes a certain quantity of unemployment, apart from the consideration of its ultimate effect on the number of persons to whom employment is given. Professor Shield Nicholson finds two laws or tendencies which operate in reducing this disturbing influence of machinery. He holds (1) that a radical change made in the methods of production will be gradually and continuously adopted ; (2) that these radical changes—these discontinuous leaps—tend to give place to advances by small increments of invention.<sup>1</sup>

History certainly shows that the fuller application of great inventions has been slow, though Professor Nicholson somewhat overestimates the mobility of labor and its ability to provide against impending changes. The story of the introduction of the power loom discloses terrible sufferings among the hand weavers of certain districts, in spite of the gradual manner in which the change was effected. The fact that along with the growth of the power loom the number of hand looms was long maintained, is evidence of the immobility of the hand weavers, who kept up an irregular and ill-paid work through ignorance and incapacity to adapt themselves to changed cir-

<sup>1</sup> J. S. Nicholson, *Effects of Machinery on Wages*, p. 33.

cumstances.<sup>1</sup> In most of the cases where great distress has been caused, the directly operative influence has not been introduction of machinery but sudden change of fashion. This was the case with the crinoline-hoop makers of Yorkshire, the straw-plaiters of Bedfordshire, Bucks, Herts and Essex.<sup>2</sup> The suddenly executed freaks of protective tariffs seem likely to be a fruitful source of disturbance. So far as the displacement has been due to new applications of machinery, it is no doubt generally correct to say that sufficient warning is given to enable workers to check the flow of labor into such industries and to divert it into other industries which are growing in accordance with the new methods of production.

Mr. Nicholson's second law is, however, more speculative and less reliable in its action. It seems to imply some absolute limit to the number of great inventions. Radical changes are no doubt generally followed by smaller increments of invention; but we can have no guarantee that new radical changes quite as important as the earlier ones may not occur in the future. There are no assignable limits to the progress of mechanical invention, or to the rate at which that progress can be effected. If certain preliminary difficulties in the general application of electricity as a motor can be overcome, there is every reason to believe that, with the improved means of rapidly communicating knowledge we possess, our factory system may be reorganized and labor displaced far more rapidly than in the case of steam, and at a rate which might greatly exceed the capacity of labor to adjust itself to the new industrial conditions. At any rate we are not at liberty to take for granted that the mobility of labor must always keep pace with the application of new and labor-disturbing inventions. Since we are not able to assume that the market will be extended *pari passu* with the betterment in methods of production, it is evident that improvements in machinery must be reckoned as a normal cause of insecurity of employment. The loss of employment may be only "temporary," but as the life of a workingman is

<sup>1</sup> Babbage, *Economy of Manufactures*, p. 230.

<sup>2</sup> Cf. Thorold Rogers, *Pol. Econ.* (1869), pp. 78, 79.

also temporary, such loss may as a disturbing factor in the working life have a considerable importance.

2. Whether machinery, apart from the changes due to its introduction, favors regularity or irregularity of employment, is a question to which I think a tolerably definite answer can be given. The structure of the individual factory, with its ever-growing quantity of expensive machinery, would seem at first sight to furnish a direct guarantee of regular employment, based upon the self-interest of the capitalist. Some of the "sweating" trades of London are said to be maintained by the economy which can be effected by employers who use no expensive plant or machinery, and who are able readily to increase or diminish the number of their employees so as to keep pace with the demands of some "season" trade, such as fur-pulling or artificial flowers. When the employer has charge of enormous quantities of fixed capital, his individual interest is strongly in favor of full and regular employment of labor. On this account, then, machinery would seem to favor regularity of employment. On the other hand Professor Nicholson has ample evidence in support of his statement that

great fluctuations in price occur in those commodities which require for their production a large proportion of fixed capital. These fluctuations in prices are accompanied by corresponding fluctuations in wages and irregularity of employment.<sup>1</sup>

In a word, while it is the interest of each producer of machine-made goods to give regular employment, some wider industrial force compels him to irregularity. What is this force? It is uncontrolled machinery. In the several units of machine production, the individual factories or mills, we have admirable order and accurate adjustment of parts; in the aggregate of machine production, we have no organization, but a chaos of haphazard speculation. "Industry has not yet adapted itself to the changes in the environment produced by machinery." That is all.

But, it may be asked, how is machinery to blame for the fluctuation of prices and the correspondent irregularity of

<sup>1</sup> Effects of Machinery on Wages, p. 66.

employment? Professor Nicholson has with admirable candor set on the one hand the orthodox economic theory, that, since ultimately commodities exchange for commodities, there can be no such thing as over-production; on the other hand, the universal belief of the business man that bad trade is due to over-production, and that general bad trade implies not merely the theoretic possibility, but the actual existence, of a condition which is properly described as general over-production. Business men see that all the markets are congested with goods which remain unsold, that all kinds of machinery are in excess, that owing to an increase of supply in relation to demand, prices are falling all round; and they are naturally not contented with the airy declaration of economists that over-production is impossible. Would it not be better for economists to recast their theory, so as to be in harmony with facts? Going a little behind the business view, might they not admit that under-consumption, the reluctance of those who hold the purchasing power to demand consumptive goods, is the true cause of the disease which figures on the surface as over-production? Under a monetary system of commerce, though commodities still exchange for commodities, it is an essential condition of that exchange that those who possess purchasing power shall be willing to use a sufficient proportion of it to demand consumptive goods. Otherwise the production of productive goods is stimulated unduly while the demand for consumptive goods is checked,—the condition which the business man rightly describes as over-supply of the material forms of capital. When production was slower, markets narrower, credit less developed, there was less danger of this big miscalculation, and the corrective forces of industry were more speedily effective. But modern machinery has enormously expanded the size of markets, the scale of competition, the complexity of demand, and no longer produces for a small local present demand, but for a large world future demand. Hence machinery is the direct material cause of these great fluctuations which bring, as their most evil consequence, irregularity of wages and employment.

How far does this tend to right itself? Professor Nicholson believes that time will compel a better adjustment between machinery and its environment.

The enormous development of steam communication and the spread of the telegraph over the whole globe have caused modern industry to develop from a gigantic star-fish, any of whose members might be destroyed without affecting the rest, into a μέγα ζῶον which is convulsed in agony by a slight injury in one part. A depression of trade is now felt as keenly in America and even in our colonies as it is here. Still, in the process of time, with the increase of organization and decrease of unsound speculation, this extension of the market must lead to greater stability of prices; but at present the disturbing forces often outweigh altogether the supposed principal elements.<sup>1</sup>

The organization of capital under the pressure of these forces is doubtless proceeding, and such organization, when it has proceeded far enough, will indisputably lead to a decrease of unsound speculation. But these steps in organization have been taken precisely in those industries which employ large quantities of fixed capital, and the admitted fact that the severest fluctuations take place in these industries is proof that the steadying influences of such organization have not yet had time to assert themselves to much purpose. The competition of larger and larger masses of organized capital seems to induce heavier speculation and larger fluctuations. Not until a whole species of capital is organized into some form or degree of "trust" is the steadying influence of organization able to predominate. But there is also another force which, in England at any rate, under the increased application of machinery, makes for an increase rather than a diminution of speculative production. It has been seen that the proportion of workers engaged in producing comforts and luxuries is growing, while the proportion of those producing the prime necessities of life is declining. How far the operation of the law of diminishing returns will allow this tendency to proceed, we cannot here discuss. But statistics show that this is the present tendency

<sup>1</sup> *Op. cit.* p. 117.

both in England and in the United States. Now the demand for comforts and luxuries is essentially more irregular and less amenable to commercial calculation than the demand for necessities. The greatest economies of machine production are found in industries where the demand is largest, steadiest and most calculable. Hence the effect of machinery is to drive ever and ever larger numbers of workers from the less to the more unsteady industries — those which are most exposed to the influences of taste, caprice or changing income. Nor is this difficulty met by the admission that the comforts of one class or generation acquire the steadiness of necessities as the standard of comfort rises. For the development of new comforts and luxuries, not less fluctuating, attends each rise in the standard of comfort. Nothing but a general change in morals, inducing a general increased regularity in methods of consumption, will diminish this tendency which makes for irregularity of employment.

On the whole it seems reasonable to conclude that the present net influence of machinery is towards an increased irregularity of employment, except in industries where (1) the demand for the commodities produced is regular and (2) supply is regulated by the organized action of those who control production.

Our reasoning from the ascertained tendencies of machinery inclines to the conclusion that, taking into consideration the two prime factors, namely, the number of those employed and the regularity of employment, machinery does not favor an increased steady demand for labor. It tends, apparently, to drive labor in three directions :

(1) To the invention, execution and maintenance of machinery to make machines, the labor of making machines being continually displaced by machines, and being thus driven to the production of machines further remote from the machines directly engaged in producing consumptive goods. The labor thus engaged must be in an ever diminishing ratio to a given quantity of consumption. Nothing but a great increase in the quantity of consumption or the opening of new varieties of



consumption can maintain or increase the demand for labor in these machine-making industries.

(2) To continual specialization and refinement in the arts of distribution. The multiplication of merchants, middlemen and retailers, which, in spite of the tendency to centralization in distributive work, is so marked a feature of English industry during the last forty years, is directly traceable to the influence of machinery.<sup>1</sup>

(3) To the supply of new wants, which are either (*a*) wholly non-material, *i.e.*, intellectual, artistic or other personal services, (*b*) partly non-material, *e.g.*, works of art chiefly the embodiment of individual taste or spontaneous energy, or (*c*) too irregular or not sufficiently extended to admit the application of machines. The learned professions, art, science and literature, and those branches of labor engaged in producing luxurious materials or services, furnish a steadily increasing employment. So long, then, as a community grows in numbers, so long as individuals desire to satisfy more fully their present wants, and combine to develop new wants forming a higher or more intricate standard of comfort, there is no evidence to show that machinery has an effect in decreasing the aggregate demand for labor, but there is strong reason to believe that it tends to make employment more unstable and precarious of tenure and more fluctuating in its market value.

### III. *Upon the Quality of Labor.*

In considering the influence of machinery upon the quality of labor, *i.e.* skill, duration, intensity, *etc.*, we have first to meet two questions: What are the qualities in which machinery surpasses human labor? What are the kinds of work in which machinery displaces man? Now, since the whole of industrial work consists in moving matter, the advantage of machinery must consist in the production and disposi-

<sup>1</sup> The following are the percentages of the employed engaged in dealing and industrial service :

|                      | 1841 | 1851 | 1861 | 1871 | 1881 |
|----------------------|------|------|------|------|------|
| Dealing . . . .      | 4.4  | 5.6  | 6.5  | 7.1  | 7.5  |
| Industrial Service . | 4.3  | 3.8  | 3.9  | 4.5  | 6.2  |

tion of motive power. The general economies of machinery are two : (1) The increased quantity of motive force it can apply to industry ; (2) Greater exactitude in the regular application of motive force (*a*) in time—the exact repetition of the same acts at regulated intervals, or greater evenness in continuity, (*b*) in place—exact repetition of the same movements in space. All the advantages imputed to machinery in the economy of human time, the utilization of waste material, the display of concentrated force or the delicacy of manipulation are derivable from these two general economies. Hence it follows that wherever the efficiency of labor power depends chiefly upon the output of muscular force in motive power, or precision in the regulation of muscular force, machinery will tend to displace human labor. Assuming, therefore, that displaced labor finds other employment, it will be transferred to work where machinery has not the same advantage over human labor, that is to say, to work where the muscular strain or the need for regularity of movement is less. At first sight it will thus seem to follow that every displacement of labor by machinery will bring an elevation in the quality of labor, that is, will increase the proportion of labor in employments which tax the muscles less and are less monotonous. This is in the main the conclusion towards which Professor Marshall inclines.<sup>1</sup>

So far as each several industry is concerned, it has been shown that the introduction of machinery signifies a net reduction of employment, unless the development of trade is largely extended by the diminution in expenses of production. It cannot be assumed as a matter of course that the labor displaced by the introduction of automatic folders in printing will be employed in less automatic work connected with printing. It may be diverted from muscular monotony in printing to the less muscular monotony of providing some new species of luxury, the demand for which is not yet sufficiently large or regular to justify the application of labor-saving machinery. But even assuming that the whole or a large part of the displaced labor

<sup>1</sup> Principles of Economics, (2d ed.), pp. 314, 322.

is engaged in work which is proved to have been less muscular or less automatic by the fact that it is not yet undertaken by machinery, it does not necessarily follow that there is a diminution in the aggregate of physical energy given out, or in the total "monotony" of labor.

One direct result of the application of an increased proportion of labor-power to the kinds of work which are less "muscular" and less "automatic" in character, will be a tendency towards greater division of labor and more specialization in these employments. Now the economic advantages of increased specialization can only be obtained by increased automatic action. Thus the routine or automatic character which constituted the monotony of the work in which machinery displaced these workers, will now be imparted to the higher grades of labor in which they are employed, and these in their turn will be advanced towards a condition which will render them open to a new invasion of machinery.

Nor is it shown that the introduction of machine production tends to diminish the physical strain upon the worker. As regards those workers who pass from ordinary manual work to the tending of machinery, there is a good deal of evidence to show that their new work taxes their physical vigor quite as severely as the old work. Professor Shield Nicholson quotes the following striking statement from the *Cotton Factory Times*:

It is quite a common occurrence to hear young men who are on the best side of thirty years of age declare they are so worked up with the long mules, coarse counts, quick speeds and inferior material, that they are fit for nothing at night only going to bed and taking as much rest as circumstances will allow. There are few people who will credit such statements; nevertheless they are true, and can be verified any day in the great majority of the mills in the spinning districts.

Professor Nicholson thus sums up his evidence upon this head:

It is clear that the use of machines, though apparently labor-saving, often leads to an increase in the *quantity of labor*; nega-

tively by not developing the mind, positively by doing harm to the body.<sup>1</sup>

When any muscular or physical effort is required, it is pretty evident that an increased duration or a greater continuity in the slighter effort may tax the body quite as severely as the less frequent application of a much greater bodily force. There can be no question that in a competitive industrial society, there exists a tendency to compensate for any saving of muscular or other physical effort afforded by the intervention of machinery, in two ways: first, by "forcing the pace"—compelling the worker to tend more and more machines, and to increase the strain, if not upon the muscles, then upon the nerves; secondly, by extending the hours of labor. A lighter form of labor spread over an increased period of time may of course amount to an increased tax upon the vital energy. It is not disputed that a general result of the factory system has been to increase the average length of the working day, if we take under our survey the whole area of machine production in modern industrial communities. This is only in part attributable to the fact that workers can be induced to sell the same daily output of energy as before, while a longer time is required for its expenditure. Another influence of equal potency is the economy of machinery effected by longer hours.

These two forces operating together have lengthened the average working day. Certain subsidiary influences also deserve notice, in particular the introduction of cheap illuminants. Before the cheap provision of gas, the working time of those engaged in retail trade was limited by daylight. Now a part of nature's rest is annexed to the working day. There are of course powerful social forces working for the curtailment of the working day, and these very forces are, as we shall observe, powerfully though indirectly aided by ma-

<sup>1</sup> Page 82. Babbage, in laying stress upon one of the "advantages" of machinery, makes an ingenuous admission of this "forcing" power of the machine: "One of the most singular advantages we derive from machinery is in the check which it affords against the inattention, the idleness or the knavery of human agents." — *Economy of Manufactures*, p. 39.

chinery. But the direct economic influence of machinery is in favor of an extended working day. The full significance of this is not confined to the fact that a large proportion of the worker's life is consumed in the growing monotony of production. The curtailment of the portion of time in which he figures as consumer must be set against any increase in real wages or power of consumption which has come to him from the increase of productive power under machinery.<sup>1</sup> So far therefore as the age of machinery has converted handicraftsmen into tenders of machinery, it seems as if Mill were almost justified in his somewhat rhetorical verdict: "It is questionable if all the mechanical inventions yet made have lightened the day's toil of any human being."

Now to come to the question of "monotony." Is the net tendency of machinery to make labor more or less monotonous, to educate the worker or to brutalize him? Does labor become more intellectual under the machine? Professor Marshall, who has thoughtfully discussed this question, inclines upon the whole in favor of machinery. It takes away manual skill, but it substitutes higher or more intellectual forms of skill.<sup>2</sup> "The more delicate the machine's power, the greater is the judgment and carefulness which is called for from those who see after it."<sup>3</sup> Since machinery is daily becoming more and more delicate, the tending of machinery would become more and more intellectual. The judgment of Mr. Cooke Taylor, in the conclusion of his admirable work, *The Modern Factory System*, is the same: "If man were merely an intellectual animal, even only a moral and intellectual one, it could scarcely be denied, it seems to us, that the results of the factory system have been thus far elevating."<sup>4</sup> Mr. Taylor indeed admits of the operative population that "they have deteriorated artistically; but art is a matter of faculty, of perception, of aptitude, rather than of intellect." This curious and significant admission deserves more attention than I can here bestow upon it.

<sup>1</sup> Patten, *The Theory of Dynamic Economics*, ch. xi.

<sup>2</sup> Marshall, *op. cit.*, p. 315.

<sup>4</sup> Page 435.

<sup>3</sup> *Ibid.*, p. 316.

The question of the net intellectual effects of machinery is not one which admits of positive answer. It would be open to one to admit with Mr. Taylor that the operatives were growing more intellectual, and that their contact with machinery exercises certain educative influences, but to deny that the direct results of machinery upon the workers were favorable to a wide cultivation of intellectual powers, as compared with various forms of freer and less specialized manual labor. The intellectualization of the town operatives (assuming the process to be taking place) may be attributable to the thousand and one other influences of town life rather than to machinery, save indirectly so far as the modern industrial center is itself the creation of machinery. It is not, I think, possible at present to offer any clear or definite judgment. But the following distinctions seem to have some weight in forming our opinion.

The growth of machinery has acted as an enormous stimulus to the study of natural laws. A larger and larger proportion of human effort is absorbed in processes of invention, in the manipulation of commerce on an increasing scale of magnitude and complexity, and in such management of machinery and men as requires and educates high intellectual faculties of observation, judgment and speculative imagination. Of that portion of workers who may be said, within limits, to control machinery, there can be no question that the total effect of machinery has been highly educative. Some measure of these educative influences descends even to the "hand" who tends some minute portion of machinery.

So also allowance should be made for the skilled work of making and repairing machinery. The engineer's shop is becoming every year a more and more important factor in the equipment of a factory or mill. But though "breakdowns" are essentially erratic and must always afford scope for ingenuity in their repair, even in the engineer's shop there is the same tendency for machinery to undertake all work of repair which can be brought under routine. So the skilled work in making and repairing machinery is continually being reduced

to a minimum, and cannot be regarded, as Professor Nicholson is disposed to regard it, as a factor of growing importance in connection with machine production. The more machinery is used, the more skilled work of making and repairing will be required, it might seem. But the rapidity with which machinery is invading these very functions turns the scale in the opposite direction, at any rate so far as the making of machinery is concerned. Statistics relating to the number of those engaged in making machinery and tools, show that the proportion they bear to the whole working population is an increasing one ; but the rate of this increase is by no means proportionate to the rate of increase in the use of machinery. While the percentage of those engaged in making machinery and tools rises from 1.7 in 1861 to 1.8 in 1871 and 1.9 in 1881, the approximate increase of steam power applied to fixed machinery and locomotives shows a much more rapid rise,—from 2,100,000 horse power in 1860 to 3,040,000 in 1870 and 5,200,000 in 1880.<sup>1</sup> Moreover, an increased proportion of machinery production is for export trade, so that a large quantity of the labor employed in those industries is not required to sustain the supply of machinery used in English work. In repairs of machinery, the economy effected by the system of interchangeable parts is one of growing magnitude, and tends likewise to minimize the skilled labor of repair.<sup>2</sup>

Finally it should be borne in mind that in several large industries where machinery fills a prominent place, the bulk of the labor is not directly governed by the machine. This fact has already received attention in relation to railway workers. The character of the machine certainly impresses itself upon these in different degrees, but in most cases there is a large amount of detailed freedom of action and scope for individual skill and activity.

Making allowance, then, for the intelligence and skill used in the invention, application, management and repair of machinery, what are we to say of the labor of him who, under the

<sup>1</sup> Mulhall, *Dictionary of Statistics*, p. 545.

<sup>2</sup> Cf. Marshall, *Princ. of Econ.*, vol. I. p. 315.

minute subdivision enforced by machinery, is obliged to spend his working life in tending some small portion of a single machine, the whole work of which is to push some single commodity a single step along the journey from raw material to consumptive good?

His work, it is urged, calls for "judgment and carefulness." So did his work in manual labor before the machine took it over. His "judgment and carefulness" are now confined within narrower limits than before. The responsibility of the individual worker is greater, precisely because it is narrowed down so as to be related to and dependent on a number of other operatives in other parts of the same machine with whom he has no direct personal concern. Such realized responsibility is an element in education, moral and intellectual. But this responsibility is a direct result of the minute subdivision. It is, I think, questionable whether the vast majority of machine workers get any considerable education from the fact that the machine in conjunction with which they work represents a huge embodiment of the delicate skill and invention of many thousands of active minds, though some value may be accorded to Mr. Cooke Taylor's contention that "the mere exhibition of the skill displayed and the magnitude of the operations performed in factories can scarcely fail of some educational effect."<sup>1</sup> Professor Shield Nicholson expresses himself more dubiously on the educational value of the machine: "Machinery of itself does not tend to develop the mind as the sea and mountains do, but still it does not necessarily involve deterioration of general mental ability."

The work of tending machinery is not of course to be regarded as absolutely automatic. To a certain limited extent the "tender" of machinery rules as well as serves the machine: in seeing that his portion of the machine works in accurate adjustment to the rest, the qualities of care, judgment and responsibility are evoked. A great part of modern inventiveness, however, is engaged in devising automatic checks and indicators for the sake of dispensing with human skill and

<sup>1</sup> *The Modern Factory System*, p. 435.



reducing the spontaneous or thoughtful elements of tending machinery to a minimum. When this minimum is reached the highly paid skilled workman gives place to the low-skilled woman or child, and eventually the process passes over entirely into the hands of machinery. So long, however, as human labor continues to co-operate with machinery, certain elements of thought and spontaneity adhere to it. These must be taken into account in any estimate of the net educative influence of machinery. But though these mental qualities must not be overlooked, exaggerated importance should not be attached to them. The layman is often apt to esteem too highly the nature of skilled specialist work. A locomotive superintendent of a railway was recently questioned as to the quality of engine-driving. "After twenty years experience he declared emphatically that the very best engine-drivers were those who were most mechanical and unintelligent in their work, who cared least about the internal mechanism of the engine."<sup>1</sup> Yet engine-driving is far less mechanical and monotonous than ordinary tending of machinery.

So far as the man follows the machine and has his work determined for him by mechanical necessity, the educative pressure of the latter force must be predominant. Machinery like everything else can only teach what it practices. Order, exactitude, persistence, conformity to unbending law,—these are the lessons which must emanate from the machine. They have an important place as elements in the formation of intellectual and moral character. But of themselves they contribute a one-sided and very imperfect education. Machinery can exactly reproduce; it can, therefore, teach the lesson of exact reproduction, an education of quantitative measurements. The defect of machinery, from the educative point of view, is its absolute conservatism. The law of machinery is a law of statical order, that everything conforms to a pattern, that present actions precisely resemble past and future actions. Now the law of human life is dynamic, requiring order not as valuable in itself, but as the condition of progress. The law of human

<sup>1</sup>The Social Horizon, p. 22.

life is that no experience, no thought or feeling is an exact copy of any other. Therefore, if you confine a man to expending his energy in trying to conform exactly to the movements of a machine, you teach him to abrogate the very principle of life. Variety is of the essence of life, and machinery is the enemy of variety. This is no argument against the educative uses of machinery, but only against the exaggeration of these uses. If a workman expend a reasonable portion of his energy in following the movements of a machine, he may gain a considerable educational value; but he must also have both time and energy left to cultivate the spontaneous and progressive arts of life.

It is often urged that the tendency of machinery is not merely to render monotonous the activity of the individual worker, but to reduce the individual differences in workers. This criticism finds expression in the saying: "All men are equal before the machine." So far as machinery actually shifts upon natural forces work which otherwise would tax the muscular energy, it undoubtedly tends to put upon a level workers of different muscular capacity. Moreover, by taking over work which requires great precision of movement, there is a sense in which it is true that machinery tends to reduce the workers to a common level of skill, or even of un-skill.

Whenever a process requires peculiar dexterity and steadiness of hand, it is withdrawn as soon as possible from the cunning workman, who is prone to irregularities of many kinds, and it is placed in charge of a peculiar mechanism, so self-regulating that a child can superintend it.<sup>1</sup>

That this is not true of the most highly skilled or qualitative work, must be conceded, but it applies with great force to the bulk of skilled labor. By the aid of machinery, *i.e.*, of the condensed embodiment of the inventor's skill, the clumsy or weak worker is rendered capable of assisting the nicest movements on a closer equality with the more skilled worker. Of course piece work, as practised in textile and hardware industries, shows that the most complete machinery has not

<sup>1</sup> Ure, *Philosophy of Manufactures*, ch. I., p. 19.

nearly abolished the individual differences between one worker and another. But assuming that the difference in recorded piece wages accurately represents difference in skill or capacity of work,—which is not quite the case,—it seems evident that there is less variation in capacity among machine-workers than among workers engaged in employments where the work is more muscular, or is conducted by human skill with simpler implements. The difference in productive capacity between an English and a Hindoo navvy is considerably greater than the difference between a Lancashire mill-operative and an operative in an equally well-equipped and organized Bombay mill.

But this is by no means all that is signified by the “equality of workers before the machine.” It is the adaptibility of the machine to the weaker muscles and intelligence of women and children that is perhaps the most important factor. The machine in its development tends to give less and less prominence to muscle and high individual skill in the mass of workers, more and more to certain qualities of body and mind which not only differ less widely in different men, but in which women and children are more nearly on a level with men. The tendency of machine industry to displace male by female labor is placed beyond all question by the statistics of occupations in England, which show since 1851 a regular and considerable rise in the proportion of women to men workers in almost all branches of manufacture.<sup>1</sup> Legal restrictions, and in the more civilized communities, the growth of a healthy public opinion, prevent the economic force from being operative to the same degree so far as children are concerned.

<sup>1</sup> The following statistics, drawn from Booth's *Occupations of the People*, relate to the displacement of male by female labor:

Textiles and dyeing: From 1851 to 1881 males show continuous decline in absolute numbers, females continuous increase.

|            | Males.  | Females. |
|------------|---------|----------|
| 1851 . . . | 462,400 | 472,100  |
| 1861 . . . | 439,700 | 526,500  |
| 1871 . . . | 414,500 | 555,500  |
| 1881 . . . | 396,400 | 566,200  |

Those very qualities of care and judgment, of detailed attention, of regularity and patience which, as we saw, are characteristic of machine work, are common human qualities, in the sense that they are within the capacity of all and that even in the degree of their possession and practice there is less difference between the most highly trained mechanic and the raw "half-timer" than in the possession and practice of such powers as machinery has superseded. It must, I think, be recognized that machinery does exercise a certain equalizing

The figures of dress industries are equally significant:

|            | Males.  | Females. |
|------------|---------|----------|
| 1851 . . . | 397,500 | 471,200  |
| 1861 . . . | 378,600 | 550,900  |
| 1871 . . . | 363,300 | 552,700  |
| 1881 . . . | 344,700 | 609,300  |

These figures show a quickening of the pace of displacement in the last decennial period. If we take other manufacturing industries in which women are engaged in considerable numbers, a similar movement is traceable in all: the relative rate of increase in the employment of women exceeds that of men, even where the numbers of the latter do not absolutely decline. Such industries are wood-furniture and carriages; printing and bookbinding; feathers, leather, glues; paper, floorcloths and waterproof; earthenware, machinery and tools; food, drink and smoking. In many other industries in which no women or very few were occupied in 1841, women have effected an entrance and are growing in numbers more rapidly than men. Such are fuel, gas, chemicals; operative building; quarrying and bricklaying; watches, instruments and toys; navigation and docks. They have even made an entry in road-making and ship-building, salt and water-works and railways. The only group of machine industries in which their numbers have not increased more rapidly than those of men since 1851 is the metal industries. Even here, however, they nearly hold their own.

It appears, then,

1. That the tendency of modern industry is to increase the quantity of employment given to women as compared with that given to men. (As against the numerical increase of employment, consideration should be taken of the greater irregularity of woman's work and the fact that a larger number of women returned as industrial workers give only a portion of their day to industry.)

2. That this tendency is chiefly confined to manufacturing industries. (The increase of female employment in dealing and industrial service is not larger than the increase of male employment between 1851 and 1881.)

3. In the manufacturing industries, omitting a few essentially male industries where the muscles are even under machinery severely taxed, the increased rate of employment is greatest in those industries where machinery has been most highly developed, as for example, the textile industries and dress.

It is thus proved that machinery favors the employment of female rather than male labor.

effect by assigning a larger and larger relative importance to those faculties which are specific, as compared with those which are individual. The antagonism between machinery and art in this respect is fundamental and irreconcilable. So long and so far as the public continue to sink their individual differences as consumers and employ their expanding powers of purchase in demanding increased quantities of the same kinds of consumptive goods, machinery, with its economic faculty of exact, cheap and rapid reproduction, will gain an increasing control over the processes of production. When the public becomes more individualistic in its consumption, in demanding greater variety and adaptability to individual taste, instead of immense quantity, this new character of consumption will reduce the advantages enjoyed by machinery, and will operate as an increased demand for art in the sense of individual effort of production.

JOHN A. HOBSON.

## LEVASSEUR'S LA POPULATION FRANÇAISE.<sup>1</sup>

THE population of France offers one of the best and most interesting fields for the study of demography, or, as we would say in English, vital statistics. It is a large population, homogeneous, increasing at a slow rate—in fact, now almost stationary—not disturbed by immigration or emigration to any great extent, occupying a fully settled territory which, except for the gain of Savoy-Nice and for the loss of Alsace-Lorraine, is about the same to-day that it was in 1815. While France has shared fully in the industrial and intellectual progress of the nineteenth century, yet her progress has been normal and gradual, and outside of politics there have been no cataclysms or sudden revolutions. At the same time, France has had her share of those great social blows—wars, pestilences and famines—than which (like death) nothing is more certain nor the time and manner thereof more uncertain, and which are so important to demographic science as showing the power of external influences over primary social functions like births, deaths and marriages. These considerations would seem to make the French population an almost ideal example of the static condition, stationary but not stagnant, fixed without being stereotyped, where we can successfully observe the normal laws of population. In this respect France shows a great contrast to her enemy and rival Germany, where there is rapid increase relieved by emigration, as well as to England, where constantly expanding industry, commerce and colonization allow a corresponding expansion of population, and to the United States, where unoccupied land and free immigration give an exceptional complexion to demographic facts.

Again, the French population is of great sociological interest because of this very stationariness. Ever since Malthus raised

<sup>1</sup> *La Population Française*. Par E. Levasseur. Volumes II and III. Paris, Arthur Rousseau, 1891, 1892. — 8vo, 523, 569 pp.

the uneasy ghost of a population increasing faster than the means of subsistence (*pace* to the logicians), the implication in all well-regulated political economies has been that a population increasing slowly, if the slow increase be due to intelligence and not to disease, vice and crime, is the desirable, if not the absolutely necessary, condition for social happiness and prosperity. Now, in France we have a concrete example of a stationary population and abundant wealth and all the implements of civilization. When one studies the French population, therefore, he has almost inevitably the Malthusian doctrine in mind. Is there in France less poverty, vice, crime, social suffering and discontent than elsewhere? Does the slow increase of population enable the community to get a firmer grip on the destructive forces with which humanity is obliged to wage war? Is the wolf chased further from the door and are the stalking shadows of disease and want made less visible to the naked eye? These questions are not quite fair to the French population; for they all rest on what is in reality simply a negative implication from the Malthusian doctrine. But in a modified form the question is quite justifiable, whether the present stationariness of the French population is conducive to the strength, well-being and prosperity of the nation. Can we trace a beneficent influence in the records of moral and immoral actions, in the statistics of wealth, education, thrift and health? What will be the final influence on the national and international position of France?

The second and third volumes of M. Levasseur's great work give us the material for seeking an answer to these inquiries. The first volume<sup>1</sup> was devoted mainly to an introduction on statistics as a science or method and to the history of the French population before 1789. A slight beginning only was made on the demography of modern France. This latter subject is continued in the second volume by a consideration of births, deaths and marriages (including illegitimate births, still-born, divorce, disease and other causes of death), with international comparisons; and by statistics of sex, age, urban and

<sup>1</sup> Reviewed in the *QUARTERLY*, V, 336 (June, 1890).

rural population, of vice and crime, and of education and instruction. The third volume considers the population in relation to wealth and the means of subsistence (its fecundity, migration, colonization) and in regard to the internal and external politics of France. Both volumes contain brief discussions of questions of general interest, such as the nature of statistical laws, the freedom of the human will, the causes of vice and crime, the future of France. The abundance of facts and the skill displayed in presenting them leave little or nothing to be desired. The question of interest is whether the very learned and highly distinguished author (perhaps the most distinguished living statistician) has been able in this peculiarly favorable field and from this great mass of material to deduce stable demographical laws and, even more important than that, has been able to explain the full sociological meaning for France, for the world and for science, of a stationary population in the midst of a progressive civilization. That M. Levasseur has had both questions in mind is evident from many acute and philosophical observations scattered through the work, as well as from the formal headings of some of his chapters. That the result does not seem altogether adequate to the effort made, is due to the inherent difficulties of the problem.

The characteristics of the French population are a low birth rate, a low death rate and about the average marriage rate. For the period 1865-83 the number of births in France was 25 per 1000 inhabitants, while in England it was 35, in Italy nearly 37 and in Germany 39. The birth rate in France was the lowest of any country in Europe. For the same period the death rate in France was 23.8 per 1000, in England 21.4, in Germany 26.6 and in Italy 29.1. France does not occupy the unique place in the death rate that she does in the birth rate, for England, Switzerland, Belgium, Scotland, Denmark, Sweden and Norway all have a lower death rate. Characteristic of France, however, is the closeness of the birth rate to the death rate. When we come to the marriage rate we find that it is 7.7 per 1000 inhabitants for France, 7.6 for Italy, 7.9 for



England and 8.4 for Germany. France stands in about the middle position of all the nations of Europe. The slow increase of the French population is due to the extraordinarily low birth rate.

A closer examination of the history of the birth rate in France reveals a constant tendency to decrease, with an extraordinary sensitiveness to any adverse influence, such as war, commercial depression or disease. The birth rate during the first decade of the century was about 32; during the decade from 1831 to 1840 it was 29; from 1871 to 1880, 25.4; from 1881 to 1888, 24; and in 1888, 23.4. The movement is a constantly decreasing one without any permanent recovery, and apparently has not yet reached its end. At the same time any extraordinary occasion sends the number far below the average for the decade. The dearth of 1817, the commercial crisis of 1827, the cholera of 1832, the hard times of 1837, the Crimean War and the great war of 1870, all left their mark in a decreased natality. If we examined the death rates for these dates, we should find an increased number of deaths, which in 1870-71 in fact actually exceeded the number of births, so that there was a decrease of population. If we take the whole century, there has been a constant decrease in the death rate corresponding somewhat to the decreased birth rate (from about 28 in 1801-10 to 22.2 in 1886-88), but this is partly explicable by the fact that the low birth rate has decreased the number of that class most liable to death, *viz.* the infants. The marriage rate has remained very nearly the same through the century.

The constitution of the population resulting from these primary demographic facts is easy to imagine. The size of the family is extraordinarily small. Out of 100 family establishments (*ménages*), 14 consisted of single individuals, 41.3 consisted of two or three persons, 29 of four or five persons, 14.5 of six or more persons. The average number of children to the family was only 2.07; and still further, twenty per cent of the families had no children, so that even if we take the families having children, the average number to each family

was only 2.6. The low fecundity of the French family is seen if we take the number of births to 1000 married women of the age of 15 to 45 : in France it is 203, in Italy 288, in England 297, and in Germany 348.

The feeble fecundity of the French population has attracted attention for a long time and of late years has even excited patriotic alarm, and many attempts have been made to discover the cause of it and a remedy. M. Levasseur considers with great impartiality all these explanations and the proposed remedies. The statistical test to be applied here is comparison of different departments or different classes of the population, in order to determine if difference in geographical, economic or social condition is accompanied by difference in fecundity. His conclusion is that it is not a question of race, for the French in Canada are very prolific ; neither is it connected with climate, for the departments with low increase are found in the south as well as in the north of France. Some persons have been inclined to attribute it to the decline of the influence of the Catholic religion, which is accustomed to encourage marriage. But a comparison of two *arrondissements* of the city of Paris noted for the piety of their inhabitants, with two noted for radicalism in religion and politics, showed a much larger birth rate in the latter than in the former. Some minor causes at work are : the celibacy of the clergy, priests and nuns ; the modern habits of migration, which carry the young men away and leave the women unmarried ; the increased number of persons seeking employment as domestic servants, where they remain unmarried, instead of taking up manual labor ; the military duty, retarding the age at which young men are able to call themselves established ; the love of luxurious living, which either induces a man to remain single or puts off the time of marriage or leads him to seek a woman with a *dot*. All these have some influence on the population, but they are not sufficient to explain the extraordinarily low fecundity in France, because on the one hand they do not seem to diminish the marriage rate particularly, and on the other they are also found in countries with high birth rates.

The low fecundity of the French population must be due to a general social cause, operating upon a large number of persons and sufficiently enduring to produce the permanently low birth rate which we actually find. The French do not have large families because they do not want to have them. The reason back of this general determination is, according to M. Levasseur, the desire to maintain for the children the position of comfort which the parents have obtained for themselves. The statistical proof of this proposition is the smaller fecundity among the rich and well-to-do than among the poor and the proletariat. But this test can be only a general one ; for it is impossible to classify people exactly according to their wealth or social position. The indices that M. Levasseur cites are briefly as follows :

If we analyze geographically the births and size of family, we find the greatest fecundity in Brittany, in the mountainous regions of the Pyrenees and the Alps and of Languedoc, and in Corsica. These are all agricultural regions, destitute of wealth. The force of this proof is weakened, however, by the fact that the manufacturing regions of the North have an almost equal fecundity. A second indication is that those departments having the largest number of proprietors have the lowest birth rate. Again, if we classify the departments according to their contributions to the personal property tax, or the value of inheritances, or the appraised value of real estate not built upon, or the relation of the number of buildings to inhabitants (all these being indices of wealth or well-being), it will generally be found that the birth rate varies inversely as the wealth. Finally, taking two *arrondissements* of Paris, the eighth, which is notoriously rich, and the nineteenth, which is notoriously poor, the latter has a much larger number of households with three or more children than the former. M. Levasseur makes the acute observation that the constitution of the population in the poorer district is much the same as it was for all France in 1768. That is to say, he regards the low fecundity simply as the result of the increasing wealth and the disinclination to divide the wealth among too many children. In accordance

with this belief he declares that all artificial measures for the increase of population, such as the exemption of the father of seven children from the personal property tax (law of 1889 and 1890), or paying bounties, or exemption from military service, will be of no avail, simply because inadequate. It has been argued that the compulsory division of property among the children at the death of the father restrains the number of children, and that a freedom of bequest which would allow one son to take the farm and compel the other children to seek their fortune elsewhere would make the peasants more inclined to have large families. M. Levasseur does not believe this. He points out that in the departments where the farms are the smallest, the size of the families is above the average, showing that it is not the fear of too great subdivision which is the restraining force, but the general influence of prudence. This prudential foresight is a trait which it is very difficult for a Frenchman to condemn, and M. Levasseur cannot find it in his heart to condemn it in the individual case. This brings us directly to the question whether the slow increase of population is a good or an evil for France.

The answer to this question is extremely difficult and complicated. So far as the individual is concerned, the author is inclined to take a favorable view of it; so far as the economic and political future of France is concerned, he shares the patriotic fear that France may fall behind the other great nations of Europe. So far as the individual is concerned, the slow increase of population has been accompanied by an enormous increase in wealth. The Malthusian fear that population may increase at a faster ratio than the means of subsistence has not only not been verified, but has been directly refuted, by the history of France. This more rapid growth of wealth as compared with population must result in an increased average well-being, and M. Levasseur attempts to show that there has been an increase in wages and a diminution in the cost of living by which this well-being has been shared by the laboring classes. If all this be true, the French population

may be looked upon as something typical, to which the other nations of Europe will gradually approach. It is not probable that the rate of growth of the population of Europe maintained during the last hundred years will continue. Some day the demographist may refer to France as having led the way in a movement necessary for civilization.

It is only from the political point of view that the slow increase of the French population excites apprehension. In 1801 there were five great powers in Europe, and France comprised twenty-one per cent of their total population. Now there are six, and France comprises only thirteen per cent of their population. The annual natural increase of population in France since 1872 has been 3.4 per 1000, while in Germany it has been 11.6 per 1000 (volume iii, page 491). France, with a population of 38.5 millions, maintains an army and navy of 655,000 men, that is, 17 soldiers for each 1000 inhabitants; while Germany, with a population of 49.5 millions, maintains an army and navy of 535,000 men, or 10.8 soldiers per 1000 inhabitants. The burden on France is a very heavy one and grows heavier as the discrepancy between populations increases. The only chance for a lasting peace, *vis.* the restoration of the French frontier in the east, seems impossible of attainment.

Such is the significance of the almost stationary state of the population for France herself, socially and politically. It is natural that M. Levasseur should treat of it principally from the French point of view. On the basis of his book, however, we can broaden out the question and ask whether a stationary population brings with it other social conditions differing materially from those we find elsewhere. Are the secondary demographic facts any more favorable to social well-being in France than in other countries of similar civilization but increasing population? The answer here is partly favorable and partly unfavorable or indifferent. The low birth rate in France results in an age constitution of the population which is favorable both economically and demographically. There is, namely, a small proportionate number of children and a large

proportionate number of adults in the productive periods of human life and in the ages where mortality is least. This is one of the causes of the low death rate and of the increasing average duration of life. The number of still-born and of illegitimate births is rather less in France than in Europe at large, and this is a favorable demographic sign. On the other hand criminality, suicide and vice are increasing faster than the population, which shows that France is not escaping the unfavorable influences of the growth of industrialism. In fact stationariness does not seem to imply unchangeableness in social conditions or any particular conservativeness on the part of the French population. This is seen most clearly in the movements of migration. There is very little emigration and this may perhaps be due (as M. Levasseur affirms) to the contentment of the Frenchman with his condition. Its only unfavorable effect seems to be in weakening the French power of colonization and of commercial expansion in competition with other nations who send their representatives everywhere. Immigration into France is more marked than in any other country of Europe. Part of it is due to the attractiveness of the French capital, and while the effects are not altogether conducive to social morality, yet they are not important enough to excite alarm. The other part is due to the influx of foreign workmen, especially on the confines of Belgium, Germany and Italy and in the large cities. This has already excited the resentment of the working classes, and it must be confessed that if the stationariness of the French population is favorable to high wages, this movement tends to counteract the good influence. But democracy is so strong in France that it will undoubtedly interfere as soon as the pressure is at all felt.

But the most significant migratory movement is from the country to the cities. This is going on rapidly in all the countries of the world. When it means that the country simply gives up part of its surplus population to the city, it only shows that the demand for labor is greater in industry than in agriculture, and that now a less proportionate part of the

productive power of the community is needed in growing food and raw materials than formerly. This is a natural result of the industrial condition. In France we might expect the movement to go on more slowly, because there is very little surplus population to be disposed of. As a matter of fact, however, we find not only that the country is growing less rapidly than the city, but that the country population is absolutely decreasing in number. In 1866 the rural population numbered 24,942,392; in 1886, only 24,452,395. It is this migratory movement from agriculture to industry which assimilates French demography in its secondary manifestations to that of other nations. The low birth rate is a significant fact, but the influence of social conditions seems to be the controlling one in the statistics of vice, crime, *etc.* France has not taken herself out of the general social and political movement of Europe, and we find with her, notwithstanding her stationary population, very much the same problems as elsewhere. Whether she is typical of the civilized state of the future we cannot say. There seems to be no reason why she should not be. An indefinite multiplication of human beings does not in the present state of society seem to be a particularly desirable end. Owing to the influence of biological analogies, we are beginning to look upon selection as a more important matter than mere increase. The economist who regards labor simply as a commodity may rejoice in an increased quantity of it. He employs merely the conceptions of trade, of the market, and applies them with narrow-minded confidence to the phenomena of social life. To the sociologist the fundamental fact is not the labor but the laborer—the social unit that stands behind the labor whose combination makes up the organism of society. When French demography shows us that a stationary population means improved economic and social conditions of human life, it will be time to regard it as an ideal.

There is one more question which we have not answered: Does the French population reveal any more clearly than another the fundamental laws of demography? This is the least satisfactory part of M. Levasseur's work. The usual

relations (physiological) of sex at birth, of mortality at different ages, of probability of life, of conjugal condition, *etc.*, are revealed and commented upon. But the most difficult and at the same time the most vitally interesting question in statistics is in regard to individual responsibility or social necessity in the commission of moral and immoral actions. French criminal statistics stretch back further than those of any other country in the world. The slow increase of population and the slight emigration make it a particularly favorable field for observation. These considerations, and the fact that this is one of the most important sides of the social life which the author is trying to depict, make the single short chapter devoted to the statistics of vice and crime seem inadequate. As to the causes of crime the author occupies a position of extreme moderation, very far from fatalism or necessitarianism. These causes are as follows:

L'homme est déterminé au mal par des causes diverses :

1. Les unes sont purement psychologiques et individuelles. Dans cette catégorie se placent au premier rang les mauvais instincts de la nature humaine, les passions violentes ou basses, la paresse et la débauche. Elles peuvent se rencontrer dans tous les rangs de la société, de même que dans toutes les familles des monstres peuvent naître de parents bien constitués. C'est pourquoi on voit des hommes de toute condition passer devant les cours d'assises. . . .

2. Les autres sont des causes sociales et partant générales. La misère, les mauvais exemples dans la famille et, hors de la famille, le manque d'éducation, les tentations résultant du maniement de la richesse et du désir de luxe sont du nombre des principales. . . .

3. Il y a aussi des causes climatiques, non seulement parce que le climat influe sur l'état social et sur la richesse des populations, mais parce qu'il exerce une action sur les instincts individuels. Il semble que le soleil rende les hommes plus expansifs et par suite plus violents : il se commet plus de crimes contre les personnes dans le midi que dans le nord. D'autre part ce genre de crimes est plus fréquent en été qu'en hiver.

En empruntant à la philosophie son langage, on pourrait dire que la première catégorie comprend les causes subjectives, la seconde et la troisième les causes objectives. [Volume ii, page 441.]



This may be a philosophical point of view, but it is not the statistical or demographical. The science of statistics is interested in the objective not in the subjective causes. Its purpose is to reduce the latter into the categories of the former, and the latter are called subjective only because they elude the effort to reduce them into objective causes. We do not progress by dubbing certain causes as psychological and individual, but by searching out the connection of these so-called psychological and individual causes with general external or social influences. There is nothing materialistic or fatalistic in this demand. Neither do we assert that all causes can thus be reduced or classified and all phenomena thus accounted for. All we assert is that this is the particular business of statistical or sociological science and that the science has no other reason for existence.

The same timidity (if the term is not too harsh) seems to me to influence the author in the chapter on the freedom of the will. He evidently fears that we may destroy the notion of the responsibility of criminals if we go too far in showing the causal relation between crime and the environment of the criminal. But the statistician has nothing to do with this. He has no desire one way or the other in regard to the responsibility of the individual to the community. It may at once be admitted that statistics are not able and probably never will be able to disprove the notion of a freedom of the will ; for wherever we get regularities we also get irregularities which cannot be accounted for. But it is the business of the statistician to seek the regularities wherever they can be found. This, however, does not lead to mere fatalism and destroy the possibility of social reform. Quite the contrary ; for the possibility of social reform consists in being able to predicate of a certain evil that it is the result of a certain cause, and then to remove or modify the cause. I do not believe that M. Levasseur would deny this ; but it has seemed to me that he has been too modest in emphasizing the positive conclusions of demography and too acquiescent in that popular and superficial philosophy and psychology which considers the individual solely by himself,

without regard to his social surroundings. The whole tendency of such investigation is to formulate a science of population (demography) which shall reduce the apparently arbitrary and capricious actions of the individual to general rules. No one knows better than the statistician himself how far from the desired completeness and adequateness his statistical proof of social laws is, but he must remain firm in the belief that social laws can be established. As Goethe says: "Der Mensch muss bei dem Glauben verharren dass das Unbegreifliche begreiflich sei; sonst würde er nicht forschen." The scientific statistician is often more embarrassed by the unwise friend who claims too much than by the scoffing enemy who denies everything; but there should be no doubt as to his own belief in the ultimate possibilities of his science.

All this is but a slight criticism to make of this substantial and splendid piece of work, which offers to the French such a complete picture of their national life, and which will be of scarcely less interest to foreigners, because drawn with such just perspective and with so generous a background and surroundings that it is in reality a picture of a piece of humanity.

RICHMOND MAYO-SMITH.

## REVIEWS.

*Der Getreideterminhandel.* Von DAVID KOHN. Leipzig, Duncker und Humblot, 1891. — 189 pp.

A large part of this work is devoted to a discussion of the general principles of dealings in futures. The practical applications are made more especially to the transactions on the produce exchanges, since it is the writer's intention to deal with stock speculation in another volume.

The first essential feature of a trade in futures, according to the author, is that no particular goods, but a particular grade of goods shall be transferred. The aim is to avoid so far as possible all consideration of concrete objects, and to deal directly with an abstraction called price. The bourse becomes in reality a price market. But abstract price, apart from varying physical qualities, is only conceivable in the case of commodities which are (1) homogeneous, completely capable of substitution or replaceable without loss; (2) divisible into certain units of invariable size or quantity; and (3) regularly produced and consumed in definite periods of time, so ensuring a fairly constant equilibration of demand and supply. The general rules of the exchanges provide for a maximum variation from the standards of quality or quantity which will be allowed without vitiating the contract, and the various terms of contracts are strictly defined. Every variable feature of the transaction is thus eliminated except the price, and this becomes the real object of transfer. As the banker buys and sells an abstraction, called credit, so does the speculator deal in price; the one transaction is as legitimate as the other.

The author affirms that several varieties of contracts for future delivery are not in reality true futures. The so-called "*ventes maritimes*," where actual delivery is promised on condition of the safe arrival of a cargo, is not a future; for this contract requires an actual delivery of the commodities or a settlement by differences, with recourse to forced sale or purchase in case of non-fulfillment. The future is also distinct from the dealings in warrants. In the latter the trading may be for a future time, but a particular portion of

goods is reserved for the ultimate transfer. The warrant system therefore offers no opportunity for speculation for a fall, as sales in blank are not possible when the total quantity of goods at the traders' disposal is fixed by the visible supply. The true future must allow for speculation for a fall as well as for a rise, and this is its characteristic feature. The operator forecasts and discounts the future; but a prevision of lower prices can only be discounted by the sale of goods which are not in the actual possession of the seller. The only safeguard against a foreseen time of plenty, when prices must be lower, is to anticipate it by a sale in blank, or by the much abused "short sale," of goods which are to be acquired by the seller at a later time. If the goods were actually on hand, as it is believed by the seller they will be, the price would fall of its own accord.

The author presents very fully the advantages of such operations to society. He regards the future as the highest point reached in the evolution of trade through the successive phases of barter, money and credit exchange. Credit stands necessarily in close relations to the future proper, but the latter approaches most nearly to the purest abstraction of trade. And it is this abstract character that renders it so difficult to understand. The influence of such dealings in preventing the enormous fluctuations in price which formerly were common, appears in the fact that it has reduced the average range of grain prices on the Berlin bourse during this century by more than sixty per cent. It insures a continuous open market to all. It equalizes prices throughout the world's market by means of arbitrage houses. It brings the consumer nearer the producer. It keeps general business informed of the probabilities for the future. It brings the market price nearer the true normal price, whereby goods gravitate naturally where they are most needed. Even the much condemned system of "ringing," or settlement by differential payments, is of great value, since it gives to the man without capital who can render most service to the community by reason of his skill and sagacity, the opportunity to apply these qualities to the determination of price. If all transactions had to be concluded by actual delivery, but a few wealthy operators could deal in grain, and chances for cornering the market would be vastly increased. Most important of all, perhaps, the author thinks, is the fact that the whole tendency of true future trading is to abolish its own abuses. It has been clearly proved that progress is making toward more accurate prevision of the future. Professor Gustav Cohn, in his studies of the Berlin bourse,

has shown that the average error in forecasting future prices on this exchange from 1850 to 1858 was 14.35 per cent; from 1858 to 1867 it was 10.65 per cent; from 1867 to 1871, 6.38 per cent; from 1871 to 1876, 4.20 per cent. This reveals an ever closer approximation to the real condition of affairs. The inference from this is that the profits or losses derived from mere betting are becoming greatly lessened, and that the so-called "iniquitous spoliation" by differential payments is diminishing in amount as the number of men and interests involved increases.

To the objection that such speculation raises or depresses prices unduly, the best answer is to be found in the mutual contradictions of the objectors. In producing, exporting countries, the complaint is ever that prices are depressed; while in European consuming countries the objection is always that prices are unduly raised. Both views cannot be true, and the one complaint neutralizes the other. The current objection in this country, however, is perhaps more directly met by Professor Cohn's statistics, which show that in twenty periods on the Berlin bourse, out of fifty-two covered, predicted prices were higher than the actual quotations proved to be, and moreover that the average positive error on the total transactions exceeded the minus one.

The author devotes an interesting chapter to the history of the legal status of future contracts. In France the law of 1724 refused to uphold contracts without actual definition and stipulation of the goods. This was revived from time to time till the early part of this century. After 1832 the courts generally refused to recognize future contracts, if the plea of wager or fictitious sale was entered, but in 1847 the same courts began to distinguish between wagers and true futures. The development since then has been to make the intention of delivery, without the actual deposit of the goods, sufficient to secure the validity of the contract. The law of 1885 has finally legalized transactions which do not exclude actual delivery. In Italy, courts will recognize contracts in futures, even for settlement by differential payments, if all customary forms are followed. In England, the laws of 1845 and 1860 refused right of action at law, if the seller was not in possession of the goods when the contract was made. In Holland, the greatest latitude is allowed, and no contract is presumed to be a wager, and therefore invalid, except such as expressly exclude actual delivery of goods. This is the most advanced legal view yet taken, but some of our courts have assented to it. (*Cf.* the case cited in the *POLITICAL SCIENCE QUARTERLY*, vol. vii, p. 422.)

Having treated of the nature and the legal status of the future, the author discusses its social significance. He conceives that the tendency of modern life is in favor of the aggregate, as against the individual. If, then, the individual is not to be annihilated, a just balance must be sought by assisting him in the unequal struggle. Either education must fit him to cope more efficiently with the circumstances of his environment, or these circumstances must in some way be rendered less oppressive. Legitimate speculation renders the latter process more easy ; for it tends to make the future more clear, and so lessens the probability of deception and spoliation of the less favored individual by the few who possess superior advantages, either of education or of wealth.

An objection to this theory, however, appears in the fact that, as the author half admits, the large producers and consumers are especially benefited by the nature of the exchanges, where such transactions take place. For instance, the unit employed upon the New York exchange is 16,000 bushels of wheat, which obviously excludes the small producer from direct participation in dealings there, and consequently from the coincident advantages. How far such considerations as this would vitiate the above theory is matter for discussion. The movement in favor of great enterprises, it may be said, however, is no more marked here than in the other phases of our modern economic life.

On the whole Mr. Kohn's work appears to be sound and logical, although it might be wished that a few more practical examples had been adduced to illustrate the theories. There is also a tendency toward an over-elaboration of some of these principles. For instance, in searching for a distinction between the market and the exchange, it is affirmed that in the former the merchant meets the consumer directly, while in the latter the trader deals entirely with middlemen. Here the writer appears to be inconsistent. By his own proposition that the actual trade of the bourse is not in grain or cotton, but in value or price, is not the speculator as truly the consumer of price as the retail merchant or the artisan's family is the consumer of grain? If the bourse be but a price market, is it not an over-refinement to attempt a further distinction between the two? Again, there seems to be an hiatus in the reasoning which ascribes to the modern increase in the amount of future dealings, the coincident decrease in the range of speculative prices. It is conceivable that other factors, such as speedier and more certain means of communication between different markets, may have been at work here.

These, however, are but minor objections. The book is a valuable contribution to a little-understood branch of economics and is worthy of careful study.

WILLIAM Z. RIPLEY.

*The Industrial and Commercial History of England.* Lectures delivered to the University of Oxford by the late JAMES E. THOROLD ROGERS. Edited by his son, ARTHUR G. L. ROGERS. New York, G. P. Putnam's Sons, 1892.—473 pp.

This book fails to suggest by its title the interest which it bears for students of political economy; for it is not an "industrial and commercial history of England," but a series of lectures on quite a broad range of topics in which industrial and commercial facts in English history are frequently, though not exclusively, used for illustration or argument. These lectures are edited by Mr. Arthur G. L. Rogers, son of the late Professor Thorold Rogers, and are given to the public substantially as delivered in the hall of Worcester College, Oxford, in the autumn of 1888 and the spring of 1889. It is somewhat unfortunate that the editor did not feel himself at liberty to prune the manuscript a little more thoroughly; for the reader might then have been spared the irritation and annoyance occasioned by many phrases and allusions of a local character which are wholly irrelevant to the argument. The student reads Professor Rogers' works for the facts which he gives and not for the theories which he holds, and it is not comfortable for the reader to feel himself in danger of being called a "fool and a poltroon," should he happen to agree with Ricardo rather than with the author. The pleasantries, too, which may perhaps have been effective in the class-room, should have found no place in the published work. In discussing the Scottish lease, for example, the lecturer has occasion to differ with the Duke of Argyll and says: "Greatly as I respect the duke's abilities,—for I value them almost as highly as he does himself,—I am constrained to accept the evidence of Sir John Sinclair, *etc.*" This is, doubtless, an innocent pleasantry, but for American readers who are wholly unacquainted with the Duke of Argyll's peculiarities, it weakens the force of the text. It is more excusable in his discussion of the theory of rent for Professor Rogers to say of Henry George: "He can no more reason than the founder of a modern religion"; this is not only witty but it hits the nail on the head.

*The Industrial and Commercial History of England* has, it is believed, less merit than previous works from Professor Rogers' pen, because

it does not contribute as much to our knowledge of economic history, nor can it be said that the discussions upon the subjects selected for the lectures are at all exhaustive. In the first lecture, for example, "The Development of Industrial Skill in England," in which one would naturally expect a statement of the mechanical, industrial and agricultural changes by means of which the industrial England of the fifteenth century has come to be the industrial England of to-day, we find instead a discussion on the "blunders of economists and amateurs," an argument as to the fallacy of the "sole market theory," and a statement of the "effect of production on international trade." The second chapter, which treats of the "Conditions of Economic Progress," is equally disappointing when judged from the point of view of a comprehensive analysis. No more attractive titles could be desired for lectures than "Economic Legislation from 1815 to 1841" and "Economic Legislation since 1841"; but the titles are misleading, for the text tells next to nothing of such legislation.

It is not, however, in the complete presentation of the subjects discussed that the merits of this book are to be discovered, but rather in the pertinent suggestions, shrewd observations and interesting facts which may be gleaned from it. It is, for example, worth reading the book, to find a statement of the rule for converting the prices of former centuries into the prices of the nineteenth century. Thus, we learn that prices of the fourteenth century should be multiplied by twelve and prices of the seventeenth century by two, in order to reduce them to the standard of nineteenth century prices. There are, perhaps, few economists who would accept Professor Rogers' analysis of the doctrine of rent, which concludes that rents are determined by agricultural profits rather than by the prices of agricultural products; but nowhere else can one find so clear and concise a statement of the changes in the nature of rents at different periods as in his chapter which deals with this subject. Thus, the author states that from the middle of the thirteenth to the middle of the sixteenth century rent was at its maximum, but at a fixed charge; from the middle of the sixteenth century to the middle of the seventeenth century rackrenting prevailed in its harshest form; from the middle of the seventeenth century to 1725 still another system of rents prevailed; from 1725 to the end of the Continental War rackrenting again made its appearance in England; from 1815 to the repeal of the Corn Laws "farmers had little to complain of"; after the repeal of the Corn Laws "rackrenting recommenced and continued until more than ten years ago; then the whole system col-



lapsed in a common ruin." Here is a series of facts which are of the utmost importance in guiding the student who undertakes to study the manner in which landed property was held, used and controlled in England. It is the outline of a treatise that needs to be written. Especially suggestive is the chapter on "The Joint Stock Principle in Capital," in which the question of limited liability is discussed in a most fruitful manner; the complementary chapter on "The Joint Stock Principle in Labor" is not as satisfactory.

It would perhaps be impossible for economists of the present generation to judge fairly the place which Professor Rogers will hold among nineteenth century economists. They are too greatly indebted to him for the mass of material which he has placed at their disposal, and their gratitude would incline them to undue charity when dealing with his industrial theories. One statement, however, may be made with confidence: the permanent reputation of Professor Rogers will rest on his earlier rather than on his later publications.

HENRY C. ADAMS.

*History of the English Landed Interest, its Customs, Laws and Agriculture.* By RUSSELL M. GARNIER. New York, Macmillan & Co., 1892. — xviii, 406 pp.

In this work an attempt has been made to write the history of the landed interest of England from the earliest times to the close of the Stuart period. It is in the mind of Mr. Garnier but the beginning of more extended publications, for he proposes, if encouraged, to write for the casual reader not only a second volume, bringing the above subject down to the present time, but also short, simple histories of the land laws, agriculture, gardening, *etc.* I trust that this first installment is not Mr. Garnier's conception of a short, simple history; if so, it is to be hoped for the sake of the casual reader, for whom the above work has been put together, that the others will never be written.

In the latter part of this work, from the fourteenth chapter to the close, there may be found some appreciable merits. These, however, are mainly negative. The agriculture of the Middle Ages is fairly well described; there are some good pictures of estate life — convenient *résumés* of Walter of Henley, Fitzherbert, Tusser and others, with a liberal sprinkling from Rogers' various books. But Mr. Garnier is not always accurate even here, and unfortunately we can discover no symmetrical plan of treatment, and no logical arrange-

ment whatever. The best that can be said is that the chapters contain considerable information for the curious reader who wishes some sort of knowledge of mediæval landholding and agricultural life.

The defects of the later chapters are more marked in the earlier and the merits are altogether wanting. Here at least it seems to be the case of an attempt to write a history without historical training or judgment and without any conception of historical perspective or of the laws of cause and effect. Mr. Garnier has plunged boldly, almost gaily, into a subject to treat which requires something more than an interest in current English agrarian problems. Mr. Garnier writes with the judgment of an English land-agent of the nineteenth century. He has no historical imagination; all times are alike to him, as are all authorities. Although he says that Anglo-Saxon life was "a retrograde movement towards the savage times of the aborigines" (page 95), yet in the same breath he can talk about a national Anglo-Saxon clergy and houses of worship and an Anglo-Saxon civil service and fiscal system; he can speak of bocland as evidence of the Anglo-Saxon legal acumen, and as controlled by a national statute book. He uses a strange medley of old and new authorities and seems to have no conception of their relative merits. Hume and Sharon Turner are of an equal value with Stubbs, Maitland and Ashley. There are many confused quotations, bad etymologies, misspellings and erroneous statements. All this, however, might pass for the casual reader, were the style clear and the impression left a true one. Such is not the case. The style is confused; the arrangement of matter is illogical and apparently aimless. The reader, if he has no ideas at all upon the subject, will be lost in the confusion; if he has ideas, they will become hopelessly befogged. The impressions left will be erroneous because Mr. Garnier has no adequate conception of the subject himself and cannot therefore be expected to teach others. I wonder the Messrs. Macmillan & Co. have lent their name to a book with so few merits.

CHARLES M. ANDREWS.

*The Old English Manor: a Study in English Economic History.*

By CHARLES McLEAN ANDREWS. Baltimore, the Johns Hopkins Press, 1892. — 291 pp.

This is a solid and useful piece of work. Dr. Andrews has worked carefully through the Anglo-Saxon material; he has read widely, if somewhat hastily, in recent literature; he has put together

a great mass of information on the internal life of the agrarian groups at the end of the Saxon period; and he has opinions of his own as to their origin.

These opinions may be summarized as follows: The English manors grew out of the settlement on British soil of kindred-groups of English invaders,—groups variously described as “clans” and “sub-clans” (pages 27–29, 51, 56–57). But “the Teutonic clan or sept when transported to England” should not be regarded as chieftainless, or as having a chief “of so purely elective a character as to be without importance in the discussion” (page 58). Mr. Andrews’ theory would “start with a clan chieftain whose position is practically hereditary,” and “thus carries the seignorial element to the very beginning” of English history (page 49; cf. page 66). But to these propositions important limitations are attached. “In the north, in Cumbria and Craven, the evidence seems to be strong in favor of the existence of the British language and British race under Anglians, Danes and Norsemen;” so that it was only “in the south and southeast” that there was “free scope for the Teutonic system” (page 43). Moreover, even in the south and southeast, more than half the land was waste at the time of the English conquest, and was afterwards brought into cultivation chiefly as a consequence of its grant by the king to his *comites* and to the church. On estates thus granted the grantees’ *tuns* would first be built, and around them would grow later collections of huts which formed villages (page 64); so that over a large part of the country there would be from the first not only a seigneur but a seigneur who was also the *owner* of the village lands.

Dr. Andrews evidently regards his book as supporting in the main the original free-village community theory as against those bold bad men, Fustel de Coulanges and Seebohm. But he will perhaps, on reflection, allow that when the free village is limited to about a third of the country and even then a chieftain is placed over it, the old theory of Maurer is well-nigh whittled away. May we not suspect that it is academic piety,—a reverence for that mark theory which has done so much to stimulate historical investigation at Johns Hopkins—which prevents the author from recognizing this? If so, there are others who have gone through the same stage. One, at any rate, who now thinks that in the directions indicated by Seebohm and Fustel lie our best hope of a solution of the problem, can recall with amusement the time when he regarded Mr. Denman Ross as an amiable lunatic.

Mr. Andrews' stone of stumbling is what he imagines to be Mr. Seebohm's doctrine of the Roman origin of the manor. It will perhaps be found on re-reading Mr. Seebohm's book that his doctrine is after all not quite so "extreme" (page 66) as our author would lead us to think. Mr. Seebohm expressly refuses to decide positively whether the English invaders "conquered and adopted the Roman villas . . . with the slaves and *coloni* and *tributarii* upon them" or "destroyed the Roman villas and their tenants and established fresh *hams* of their own" (*Village Community*, p. 420), though he thinks the former is more probable. All he is really anxious to show is that "there was a sufficient amount of continuity between the Roman villa and the Saxon manor to preserve the general type" (page 421). Mr. Seebohm is, of course, not absolutely consistent; no really original writer ever is: but it ought to be remarked that he more than once refers to the possibility that the English invaders brought "semi-servile" dependants with them (page 419); and he even goes so far as to suggest that "the holdings of tribal (Teutonic) households might quite possibly be, from the first, embryo manors with serfs upon them" (page 366).

It is not without reason that the pro-markian critics of Mr. Seebohm are recommended to read him over again. Not a few of them, from Professor Freeman downward, have fallen into the mistake of attributing to him a belief in a South-German origin of the English — an opinion sufficiently absurd. Mr. Andrews shares the prevalent misconception, and has two pages of solemn argument against the supposed "theory" (pages 31-33). All Mr. Seebohm tries to do is to put the "marksmen" and Teutonists on the horns of a dilemma. The three-field system is not found in North Germany; therefore the English must *either* have not brought it with them (*i.e.* they must have found it already existing in Britain), *or*, if they brought it, they cannot have come from North Germany. But this latter seems very improbable. Hence one must accept the former alternative. This was Hanssen's view (*Village Community*, 373), and this, Mr. Seebohm somewhat mildly says, appears to him also "the more likely theory" (*ibid.* p. 410); while he once more states the same dilemma a few pages later (page 421.) And to pass from great things to small, a more careful reading of Mr. Seebohm would prevent the appearance of such statements as that "the village community investigated by Mr. Seebohm is located solely in the south" (page 61; *cf.* *Village Community*, 60-72).

Mr. Andrews' book as a whole, however, is a very creditable per-

formance ; and it is to be regretted that it is marred by frequent instances of bad style. He speaks of "advancing a fact" (page 9), of "suppressing a theoretical system" (page 12), of "law" as "forming a conception" (page 14), of "a strong view" (page 20), of "steps in economic dependence" being "well advanced" (page 68), and of "land" as "originating in custom" (page 83). And that note of provinciality—the undue deference to authority and current opinion—is not as absent as one might wish: there is certainly a little too much about the "trend of opinion," and "the judgment of" X and Y. It does but little good in an investigation of this kind to be told what eminent authority A says of the presumably rash person B, unless we are given the grounds of his judgment.

W. J. ASHLEY.

*Princípios de Finanças*, gusendo as Prelecções feitas pelo lente da Faculdade de Direito. ANTONIO DOS SANTOS PEREIRA JARDIM. Quarta edição. Coimbra, Imprensa da Universidade, 1891. —8vo, 395 pp.

*Tratado de Hacienda Publica y Examen de la Española*. Por JOSÉ M. PIERNAS-HURTADO. Cuarta edición. Madrid, Ginés Hernández, 1891.—8vo, 540, 677 pp.

The most significant fact of recent scientific development is its growing international character. Not only does the modern economist find it necessary to draw his facts from a wider field than that of his own country, but if he desires to keep abreast of the modern movement he also finds it incumbent on him to read many languages and to note the advances in theory in widely distant countries. In no domain is this more true than in the science of finance. I have had occasion recently to point out some very remarkable studies by Dutch writers. Attention is now called to the works of a Spaniard and a Portuguese.

The Portuguese work of Pereira Jardim interests us more from the standpoint of fiscal practice than of fiscal theory. Not that theoretic discussions are absent or without ability ; but as the work is a posthumous one, based on lectures delivered several years ago, the field of discussion does not include the newer theories of the last decade or two. Leroy-Beaulieu and Parieu among the French, Rau and Jacob among the Germans are the latest foreign authors discussed. Pereira Jardim does not really add anything to the theory of the science. But the history and description of Portuguese public

finance, and the continual references to the inter-relations between Portuguese law and economics will be welcome to the student of comparative finance.

On the other hand the two-volume work of Professor Piernas-Hurtado of Madrid is interesting in many ways. Like the Italians and the Dutch, but unlike the French, the Spanish writers have profited by recent German investigation, and treat many of the problems from the newer point of view. But Piernas-Hurtado, while quoting liberally from Wagner and the other Germans, preserves his own individuality and does not fear to take issue with them occasionally. We notice this not alone in questions of theory, like that of progressive taxation, but in problems of practical politics, like the governmental assumption of railways.

The introductory chapter, on the history of the science of finance, is valuable as calling attention to numerous Spanish writers, not alone of the seventeenth century, when Spanish literature was still almost at the flood, but also of more recent times. The author points out the causes of the essentially individualistic trend of the nineteenth-century Spaniards, and the socialistic reaction of more recent years. The general features of the development are the same in Spain as in almost all the other European countries. Like some of his German models, Piernas-Hurtado devotes a number of chapters to the conception of the state, economic life in general and the economics of the state in particular. He looks on public expenses as public consumption, but, like pretty much all other writers on public expenses, has almost nothing but platitudes to give us here. When we come to public revenues, however, it is different. He classifies public revenues according as they arise from gifts, fiscal domain, public works, fiscal monopolies, taxes, eminent domain, fines and escheats, and devotes several chapters to each of the important classes. The most noteworthy point in his treatment of taxes is his view as to the basis of taxation. He discusses in turn expense, income and property, and finds each of these essentially defective. The really equitable basis of taxation he finds to be faculty, or the economic position of the individual as shown by the "liquid assets" (*el impuesto sobre los haberes líquidos*). By this term he wishes to denote the means of the individual as conditioned by his needs, or the proportion between income and property on the one hand, and the claims made upon him by expenses on the other. Piernas-Hurtado thus simply attempts to put into plain language the marginal utility theory of taxation, as developed by recent Dutch and German

writers. He confesses that this alone will not remedy social evils, that it is not susceptible of an exact mathematical computation, and that it may give rise to arbitrariness; but he maintains that the other suggested bases of taxation disclose the same or greater defects. Regard for the individual position of the contributor is the really important aim to be kept in view. The vagueness of this test as a practical programme of taxation will at once strike the reader; but Piernas-Hurtado is content to leave the discussion in the field of theory.

Later on, in treating of the various classes of taxation, he has many good and practical suggestions to make. The whole of his second volume in fact is devoted to the history and criticism of the state, local and colonial public finance of Spain, and he clears up much that Parieu and other writers have failed to explain. Like so many of the continental tax reformers, he sees the greatest promise of improvement in the substitution of direct for indirect taxes; and he devotes a considerable portion of the work to the proposed adjustment of the Spanish public revenues to the principles of uniformity and universality. Several chapters on the theories and practice of public credit, and especially on the budget and financial administration, conclude a work whose open-mindedness, clearness and wide range of view entitle it to an honorable place in the list of text-books of finance.

E. R. A. S.

*Free Exchange.* Papers on Political and Economical Subjects, including chapters on the Law of Value and Unearned Increment. By the late SIR LOUIS MALLET, C. B. London, Paul, Trench, Trübner & Co., 1891. — xxiii, 356 pp.

In these days a declaration of absolute faith in individualism and *laissez faire* possesses a pleasing pungency. Sir Louis Mallet, comrade of Cobden and statesman of the ultra-liberal school, never swerved from *Manchesterthum*. What to others was the policy of free trade was to him the axiom of "free exchange," a principle identical with that of private property. We gather from his son's preface that he endured factory laws and did not "discourage" operations on the "Residuum," but "his general attitude was one of distrust of all restrictive and protective legislation." He saw no other thrall than the law, and reports of labor commissions could not convince him that legal freedom would ever mean actual serfdom or slavery.

The author's *laissez faire* is not the mild distrust of government shown by Mill and the English school. It is rather that absolute confidence in the beneficence of "let alone," which has so often yielded material support to the adipose optimism of the well-to-do. It rests on the philosophy of Bastiat and Leroy-Beaulieu and Mr. Atkinson. Our author brings to the aid of this school the Jevonian doctrine of final utility, and with it attacks the "cost" and "labor" theories of value. With the passage from labor-value to use-value disappears the "unearned increment." In all classes of goods only the marginal products exchange in proportion to cost. The remaining goods are out of relation to cost, and yield rents varying with differential of advantage. To abolish rents is to destroy values as we know them. The fact is, inquiry whether a value is "earned" or not is beside the mark.

It is of no consequence whatever to the man or to the society receiving a service, whether or not the man or class rendering it is remunerated in proportion to his labor, or his sacrifice, or his merits of any kind. . . . It is not the labor incurred, but the labor saved, which concerns the recipient of a service.

What a weapon this avowal of the non-ethical nature of value places in the hands of socialists!

Natural monopolies, especially land, are vigorously defended from the "Jacobinical declaration" of Mill. Rent is "the beneficent process by which an undue pressure of demand on supply can best be averted." Remove the rents that support the leisure class, and men would come to be nothing more than "semi-savages, living always up to the extreme margin of subsistence, and periodically kept within necessary limits by famine and starvation." How Henry George would enjoy this *naïve* admission that rent is a substitute for famine! Of course the author is a Malthusian of the primitive type, relying more on positive than on preventive checks. "Men are neither wise nor virtuous as a rule;" so we need rent as a flood-gate to keep back the menacing millions of unborn.

Sir Louis does not take the trouble of showing that the rent-receivers themselves will not over-populate. As "our noblest class" and an order of beings quite superior to the vulgar British laborer, they may no doubt be trusted not to misuse their prosperity. Landlords and non-landlords probably propagate according to different laws.

While not of scientific import, the book is an interesting sample of a certain kind of economic thinking.

EDWARD ALSWORTH ROSS.



*The Tariff Controversy in the United States, 1789-1833.* By ORRIN LESLIE ELLIOTT, PH.D. Leland Stanford Junior University Monographs: History and Economics, No. 1. Palo Alto, 1892. — 8vo., 272 pp.

The first impression of the readers of Dr. Elliott's monograph is that the author has laid out his work on a very generous scale indeed. His subject is the tariff controversy—the history of opinion on the tariff. He touches the details of legislation but incidentally, the economic effects of legislation not at all. He covers, moreover, only a part of the tariff controversy, up to 1833; yet he gives us some 270 large pages. No doubt, it is to the advantage of scientific research that the investigator should not merely state his results, but should explain how he reached them, and present his proofs with ample detail. The Germans set the world an excellent example in thorough research and unwearied exposition; but they often set a depressing example in sparing the reader no item from the contents of their note-books. Dr. Elliott, like all economists of the younger generation, feels the German influence strongly, and he may be fairly reminded that it is still a virtue to be concise. He devotes some seventeen pages to a summary of Hamilton's Report on Manufactures; half-a-dozen pages apiece are given to other documents and speeches; and the debates in Congress on various tariff acts are followed with over-conscientious fidelity. Would not a briefer account suffice?

If Dr. Elliott's summaries are full, they are also careful and intelligent. He has worked up his material thoroughly, and his occasional comments are just and appreciative. The uncertainty and vacillation of opinion on the tariff question in the first years of the nation; the gradual growth of a feeling in favor of protection, based mainly on political grounds, during the complications with foreign countries in 1806-1815; the development after 1816 of a protective movement resting more distinctly on economic grounds; the attitude of North and South in 1820-30, — these are followed with perhaps needless detail, but with truth and in the main with good judgment. To the present writer it seems that more stress might be laid on the great increase of the feeling in favor of protection in the North after the financial crisis of 1818-19: the popular protective movement fairly began with that overturn. And if the tariff controversy is to be sketched in its bearing on the development of economic theory at large, it would be well to note the striking evidence of Ricardian

influence in the speeches of many of the Southern congressmen in the decade from 1820 to 1830. In general, the later part of his period is covered by Dr. Elliott much less fully than the earlier: he seems to have found himself unable to maintain the pace at which he started.

In speaking of those who advocate international free trade as "*laissez-faire* champions," Dr. Elliott seems to fall into a mistake, — perhaps, rather, a mistaken attitude, — for which he has indeed not a few respectable precedents, but which is none the less a mistake. The reasoning on which it is argued that protective duties are inexpedient is in many essentials different from that by which it is sought to prove that government interference is bad. And certainly when Dr. Elliott tells us that "Madison had little conception of *laissez faire* as a principle of economic life, and in its application stopped far short of the school of Ricardo and Mill," we suspect he has not read his Ricardo with care, and feel sure he has not mastered his Mill.

F. W. TAUSSIG.

*Die Kolonization und die Agrarverfassung der Insel Nantucket im 17. und 18. Jahrhundert.* Von A. SARTORIUS VON WALTERSHAUSEN. Abdruck aus den Jahrbüchern für Nationalökonomie und Statistik. Jena, Gustav Fischer, 1892. — 8vo, 23 pp.

It will doubtless strike the American reader as strange to find in the German *Annals of Political Economy* a detailed account of the economic development of one of our small New England islands. Dr. von Waltershausen, however, claims a widespread interest for this bit of American history, especially among the Germans, as he finds here in Nantucket an agricultural development almost identical with that carried out centuries before in Europe by the German peasant settlers.

In the southeast corner of Nantucket a small band of English colonists from Massachusetts, having obtained by purchase the exclusive right to acquire land upon the island from its resident Indians, established, according to Dr. von Waltershausen's account, their original settlement and began to colonize the land according to a method of their own. First, they divided their joint rights to the island into twenty-seven shares and apportioned these shares, or "home lots," among themselves, granting to each shareholder, however, full power of disposition over his lot, even to the extent of alienation or subdivision. Next, they proceeded to organize them-

selves into a village community, assigning to each shareholder individually enough land within the village for his dwelling-house and garden. Then by joint labor they redeemed as much waste land round about their village as they needed for agricultural purposes. Having prepared this tract roughly for the seed, they then subdivided it into strips, allotting to each shareholder one such strip to cultivate, not as he would, however, but according to certain strict rules drawn up by the village assembly. Finally, as common pasturage for their flocks — their so-called “sheep and cow commons” — they used all the rest of the land which they acquired from the Indians.

Crèvecoeur, the only other writer who seems to have gone into the subject, accounts for this peculiar method of colonization by asserting that the early settlers of Nantucket, finding the land but ill adapted to agriculture, looked to the sea as the source of their livelihood and became at first fishermen, not farmers. All they needed then for their comfort were their village homes and gardens; and when later they began to turn somewhat to agriculture and cattle-raising, they simply did not deem it worth their while to allot the land in severalty, since there was so much of it open to occupation around them, and there were no trees available for the hedge-boundaries which a system of individual allotment would entail.

Dr. von Waltershausen takes direct issue with Crèvecoeur, however, on this point. He proves very conclusively that the first settlers of Nantucket were not, as Crèvecoeur seems hastily to have assumed, the fishermen who in the year 1772 settled about the village of Sherburn, in the north, but the colonists from Massachusetts, who settled in the south. These colonists, von Waltershausen shows, took up farming and herding as their means of livelihood from the outset, finding fertile land and plenty of trees for houses and hedges.

What then was the cause of this somewhat un-American form of colonization in Nantucket? Dr. von Waltershausen answers the question as follows: The little band of colonists, drawn together by common religious ties, found themselves alone and unprotected on the island. Over against them stood their common enemy, the Indians, from whom they must gain their land in the first place, and continually defend it thereafter. Behind them was no such advance of eastern culture as was supporting the farmer on the mainland while he pushed out toward the west. Finding their difficulties too great to be coped with singly, the Nantucket settlers were, in a word, forced by the very nature of things, according to the author,

to band together in their village community and hold their land in common. Their system of cattle raising, further, was also extensive. For this they needed land and shepherds, and as neither pasture land nor shepherds to tend the flocks were plentiful enough at this early time to allow any extended system of private ownership, they included this land also under their system of common ownership.

So, like Crèvecoeur, Dr. von Waltershausen accounts for the peculiar institutions of Nantucket by the nature of their surroundings. He gives us a theory which is adequate indeed to explain these singular conditions; but to my mind the connection between his theory and the facts of this particular case is not removed from the realm of mere conjecture.

The author employs the closing pages of his concise little monograph in showing how the present system of individual ownership on the island has gradually superseded the old form during the course of the present century. The change has been brought about naturally, first through the growth of numbers, and secondly through the gradual transition from extensive to intensive agriculture and herding. The original twenty-seven shares, as a matter of fact, came finally for the most part into the hands of a few wealthy sheep raisers, who had long since found agriculture unprofitable. Feeling shackled by the old village rules of herding, these latter-day shareholders by mutual agreement then shook themselves free from their bonds, transformed each "home lot" into a right to the soil itself and began to pursue each his own way in caring for his flocks, to the utter destruction, however, of all rights of common still held by many of their poorer neighbors.

Students of America's economic growth will be grateful to Dr. von Waltershausen for bringing to light this most instructive bit of our history. The only disappointment one feels is that the author has not carried out to greater length his comparison between this peculiar American colonization and the earlier settlement of the German peasants. Can we not here in Nantucket follow along the lines of investigation taken up by Hanssen and Knapp in Germany? Is not, in short, our Nantucket village community the counterpart of the *Dorfgenossenschaft* of the German freemen? The arable land of Nantucket, held in common by the colonists and tilled according to village rules, seems also to correspond very closely with the *Flur* and *Flurzwang* of the early German agriculturists; and we may even go so far as to liken the sheep and cow commons of Nantucket to the extended *gemeine Weide* of the old German *Markgenossenschaft*.

*The Growth of English Industry and Commerce in Modern Times.* By W. CUNNINGHAM, D.D. Cambridge: at the University Press, 1892. — 771 pp.

Just a couple of years after the appearance of his first volume, Mr. Cunningham's untiring energy has produced the second and concluding part of his important treatise. Upon its title page appears for the first time, after the author's name, the title "Tooke Professor in King's College, London"; so that we are able to congratulate him both upon the completion of his literary task, and upon the attainment of a position from which he can in future exercise an independent influence upon economic teaching in England. It is an influence which will assuredly be salutary.

I need not repeat what I have already said (POLITICAL SCIENCE QUARTERLY, vol. vi, page 152) of the general character of Professor Cunningham's work. His breadth of treatment is even more apparent in the second volume: it becomes encyclopædic. From the wide movements of finance to the *minutiæ* of rural economy and manufacturing processes, from Ireland to India, from the sins of the Puritans to the virtues of Ricardo, our author passes with confidence and a never-ceasing supply of information:

And still we gaze, and still the wonder [grows]  
That one small head should carry all he [knows].

Much of it has, no doubt, been "journey-work"; Mr. Cunningham cannot be equally interested in every part of his wide field. But it is everywhere the production of a man of sagacity and independence. Even where we least agree, Mr. Cunningham is stimulating; and where he is interested, he gives us excellent matter.

His treatment of the period from 1776 to 1815 (pages 442-573) is on the whole, I think, the best it has yet received. It will not indeed altogether supplant Held and Toynbee, for reasons to be given later; but it rests on a wider basis of knowledge than was possessed by either of these two writers, and it touches more sides of the economic life of the time. I would call especial attention to his comparison of industrial conditions under the domestic system with those under the factory system (pages 467-475). Mr. Cunningham believes, and with justice, that the position of the work-people before the introduction of machinery has been depicted in colors far too bright. He concludes with the remark that

if we compare the factory hand of the present day with the domestic worker

as he really was in the eighteenth century, it is hard to point out any characteristic trait or any single circumstance in which he has really suffered.

I am inclined to think that this will bear a little further arguing; but Mr. Cunningham's opinion points in the right direction. His account, again, of the administration of the poor-law during the same period is particularly well worth reading: he shows that the policy of the "Speenhamland Act," most mischievous as it undoubtedly was, had more apparent justification than we are wont to think; and he has called attention to an "allotment movement" which has been almost forgotten by English politicians.

Another admirable feature in the work is the attention given to unremembered writers. With Mr. Cunningham's account of Massie (pages 384 *et seq.*, 426 *et seq.*), the historian of economic literature may indeed say that "a new planet swims into his ken"; and—among stars of lesser magnitude—Governor Pownall will interest American readers in his unexpected rôle as critic of Adam Smith.

But while this volume is of more general interest than its predecessor, and will add to Mr. Cunningham's reputation as a writer of wide learning and vigorous originality, it can hardly be denied that the weaknesses of his method of treatment are even more apparent. He remarks in his Introduction that the "range" of his theme "is so wide, the complexity so great" that "we cannot begin our task until we have settled on some principle of selection" (page 3); and his main principle would seem to be that "as we are concerned with growth, and all growth means change, we must concentrate our attention on the beginning of each change" (page 5). Accordingly we are throughout confronted with details of new projects, new manufactures, new legislation. There is little description of the broad features of the industrial organization of each period; little attempt to disentangle the larger and more stable conditions from the minor and temporary. We are told *ad nauseam* of the attempts of the government to control this or that industry, and we are left with a very imperfect vision of what the industry was which they desired to control. Thus the narrative, to any one who sits down to read fifty pages of it at a time, creates a sense of confusion, an impression of perpetual flux, which is probably far from the truth.

Then, again, Mr. Cunningham confines his attention almost exclusively to England. I do not think any one would gather from this volume, what was certainly the case, that the economic experience of England was substantially the same as that of the rest of Western Europe. Of course England was more successful in

some directions than other nations, largely owing to natural advantages : but for this greater success, it would never have obtained its commercial and industrial supremacy. But to understand why England stood out from among the rest of the nations, it is necessary to realize what was the level of industrial and commercial organization and of governmental action which was common to it and to them. This is a reflection which has been suggested by Mr. Cunningham's omitting to deal at all adequately with the Mercantile System as a body of regulations and concrete conditions ; but the same weakness is apparent in his treatment of opinion. Thus he gives us a chapter on "Economic Doctrine in the period 1689-1776," in which the Physiocrats are only mentioned incidentally and allusively—only in so far, indeed, as they were criticised in one point by Adam Smith. It may be desirable to be sometimes insular ; but when one is insular, one is a little apt to miss the true proportions of things.

The reader of the book requires one final caution. Mr. Cunningham has worked with exceeding rapidity ; but like most other very rapid workers he not infrequently makes slips. If one wants to study at all minutely any particular period, Mr. Cunningham's references will sometimes be the better for a little verification. This is particularly the case with the acts of Parliament on which he lays so great a stress ; here it sometimes looks as if our author trusted a little too much to his first hasty impressions.

Mr. Cunningham's aim has been an ambitious one ; and he has met with no small measure of success. But it was a task which in the nature of things no one man could hope to accomplish quite satisfactorily, in the space of a few years, by his own unaided efforts. The field is to a large extent an unworked one ; in every direction Mr. Cunningham has been obliged to push out alone ; so that it has been impossible for him to do more than indicate what it is that needs investigation, and to lay before us provisional conclusions. But to the small but growing body of students who are interested in economic history, it is of the utmost service that a competent scholar should have sketched out for them a rough plan of the area to be examined, should have drawn up a programme to guide their labors. This is what Mr. Cunningham has done by his two volumes ; and it is a service which altogether obscures the well-known necessary defects in the performance.

W. J. ASHLEY.

*Histoire du Commerce du Monde.* Par OCTAVE NOËL. Temps Anciens — Moyen Age. Paris, Librairie Plon, 1891.— 4to, 332 pp.

The purpose of the author of this work is evidently to publish in two volumes a convenient outline of the history of the commerce of the world. In the present volume he reviews the development of trade in Egypt and the early monarchies of southwestern Asia, dwelling on means of communication, routes of trade, commodities, and the traffic which all those states carried on with India. Then, as in all later times, the world's commerce consisted largely in the exchange of the products of the remote East for those of the Western peoples. It was carried on along isothermal lines. The Phœnicians, the greatest navigators of antiquity, brought all the coasts of the Mediterranean within this circle of relations, and so laid the foundation of the commercial system of later antiquity. M. Noël dwells appreciatively on their skill in locating trading posts, and on the encouragement they gave to the free development of the natives among whom they settled. The Greeks, though not improving upon the methods of the Phœnicians, opened up the western Mediterranean more fully, while through the conquests of Alexander a closer connection with India was established. The great contributions of Rome to the progress of the world's commerce were the building of her incomparable roads and the maintenance of peace for more than two centuries. By taking advantage of the monsoons, the periodical recurrence of which was discovered about the middle of the first century, navigation to India was greatly facilitated. Following Mommsen, M. Noël calls attention to the systematic debasement of the coinage by the emperors of the third century, and attributes much importance to this, and the consequent hoarding of treasure, as a cause of the economic collapse which followed.

In the history of mediæval commerce the author dwells on the importance of the conquest of northern Africa and Spain by the Arabs. By this the East was brought into closer contact with the West. Recent investigations have shown that throughout the Middle Age the Italian cities carried on a flourishing trade not only with Spain but with northern Africa. Treaties were concluded for its regulation, and it formed a part of the revived commercial activity which was occasioned by the Crusades. The origin of consulships and of commercial codes are of course referred to in this connection. M. Noël necessarily describes at some length the enterprises and policy of Venice, Geneva, Pisa and Florence; of the French cities,



particularly Marseilles and Montpellier; of the Flemish cities and of the Hansa. He gives a specially interesting account of the fairs held in Champagne. So far as the East is concerned, he shows that after the close of the Crusades the island of Cyprus, then ruled by princes of the house of Lusignan, became the chief center of trade. At its capital, Famagusta, the great cities of Italy, France and Spain had their quarters, and to it came merchants from all parts of the Orient. The statement is made that in the fourteenth century it exceeded in importance either Constantinople or Venice. The comparative unimportance of English trade during the Middle Age is referred to, while attention is called to the early growth of trading companies (that of the Steel Yard, the Merchants of the Staple, the Lombards, *etc.*), and the appearance of a strongly exclusive national spirit in that country. The commercial history of the period closes with the occupation of the eastern coasts of the Mediterranean by the Turks. Communication with the Orient was thus cut off and the trade of Venice began to decline. It was necessary to seek another route to the East Indies, and already the Portuguese were reaching out toward the south with some such purpose in view. When their object was accomplished, and the Spanish opened the way to the New World, the modern era in the history of commerce began.

In the preparation of this work M. Noël has confined himself almost exclusively to secondary authorities. He has summarized existing knowledge. But he has done it in a pleasing way, and has produced a useful book. It contains several plates and elaborate maps.

HERBERT L. OSGOOD.

*England and Rome.* A History of the Relations between the Papacy and the English State and Church from the Norman Conquest to the Revolution of 1688. By T. DUNBAR INGRAM, LL.D. London and New York, Longmans, Green & Co., 1892.  
— 430 pp.

The question, how far is the Church of England old and how far is she new, has been discussed often and at length. Was the papal supremacy over England during the Middle Age anything more than an idea, an empty claim? Was it successfully asserted, or did the national will ever submit to it? Was the church of Henry VIII and Elizabeth essentially different from the church of Alfred, of Henry II, of Edward III? English lawyers, whether in preambles to

statutes or in decisions from the bench, have usually answered these questions in the negative. This is the trend of Coke's argument in the *Institutes*, while the mediæval lawyers strongly affirmed national independence. This in fact they did throughout Europe. In the preamble to Elizabeth's Act of Supremacy it was declared to be a statute "restoring to the crown the ancient jurisdiction over the state, ecclesiastical and spiritual." In the famous Caudrey's Case (Coke's Reports, pt. v.) the judges made an elaborate attempt to support this view by historic evidence. English church historians have adopted much the same line of argument, while Mr. Gladstone has repeatedly affirmed that schism did not begin in England till after Pope Pius V published his bull deposing Elizabeth (1570).

Mr. Ingram's book is apparently an effort to prove Mr. Gladstone's proposition. When discussing Irish history the two are far from an agreement, but when it comes to the English Church they are — or used to be — harmonious. Mr. Ingram discusses the subject throughout in a narrow legal spirit, as if he held a brief from the Anglican against the Catholic. What Stubbs and other investigators have proved as to the national independence of the Anglo-Saxon Church he claims to be true of the centuries which followed the proclamation of universal papal supremacy. But he goes even farther than they when he affirms (page 13) that there were no separate ecclesiastical courts prior to the Conquest. He admits that during the anarchy of Stephen's reign and the period from the submission of John to the death of Henry III, the church was subject to the papacy; but the events of those years he excludes from the list of valid precedents. He reviews the history at length for the purpose of showing that no legate *a latere* was allowed to enter England except with the permission of the king and after giving assurance that he would attempt nothing contrary to the royal will; that, except in testamentary and matrimonial cases, no appeals to Rome, strictly speaking, were permitted without the consent of the king; that in the holding of councils, in appointments and translations, the church and crown were equally independent of the papacy. He lays great stress on the letters of Paschal II, which affirm that during the reign of Henry I appeals were not allowed and there was little intercourse with Rome. Still there is evidence that legates published canons in England even during this reign. He makes much of the Hackington case, of which Gervase of Canterbury gives so long an account, in order to show that after

Henry II, in consequence of his reconciliation with the pope in 1172, had partially abandoned the Constitutions of Clarendon, appeals were not allowed and legates were not admitted. He will not allow that the decrees of popes and councils ever had force in England unless they were accepted by the kings (page 63). He believes the success of the anti-papal legislation of the fourteenth century — the Statutes of Provisors and Praemunire — to have been so great, that thenceforward the influence exerted by the pope in England was “a purely moral one, due to the respect felt for him as spiritual head of the church.” Throughout this and his subsequent discussion Mr. Ingram holds consistently to the distinction between ecclesiastical and spiritual supremacy. He simply contends that the king exercised the former, while control in faith and morals, enforced by church censures alone, was left to the popes and the clergy.

Coming to the sixteenth century, Mr. Ingram argues that Henry VIII aimed only to assert to the full the ecclesiastical supremacy which his predecessors had enjoyed. In order to maintain his strictly legal view, the author makes the events of that reign hinge not upon the divorce, but upon the alleged encroachments of Wolsey, as papal legate, on the liberties of the church. Following the Calendars of State Papers, he lays great stress on the fact that at the desire of the king the powers which legates exercised *de jure* were withheld both from Wolsey and Campeggio in the bull of 1518. Then, ignoring entirely the bulls of succeeding years, which prolonged the exclusive legatine authority of Wolsey and expanded it to unexampled fullness (Rymer, XIII, pp. 734, 739; XIV, 239, 240, 241, 243 *et seq.*, 291), Mr. Ingram asserts that the cardinal

never had a special commission from the pope such as was granted to legates *a latere*, except when, at the end of his career . . . , he was appointed conjointly with Campeggio to hear and determine in England the case of Henry's marriage. [Page 149.]

Furthermore, no mention is made of the fact, which appears in the text of the decrees themselves, that the powers exercised by Wolsey between 1521 and 1529 were bestowed at the intercession of the king.

After having used the authorities in this way, it is comparatively easy for Mr. Ingram to make it appear that Wolsey grossly violated the Statutes of Provisors and Praemunire and that his punishment was just. That, according to his view, is all there was of it. The articles of the indictment express the whole truth. Mr. Ingram does not consider the divorce an element of any weight

in the question. He is consistent in making only a brief reference to it. The virtuous king, who has been sitting idly by while for a decade his chief minister was grossly violating some of the most important statutes of the realm and oppressing the subjects, suddenly realizes what has been going on, brings the minister to justice, includes the whole body of the clergy in guilt with him because they had tolerated the encroachment, and reassumes the full ecclesiastical authority. The church remained orthodox. Under such treatment the English reformation becomes easy to understand, but it loses most of its meaning, and the king all that is characteristic in his personality.

Soon after the commencement of Elizabeth's reign the popes began what the author calls their "thirty years' war against England." During this they labored by every mode of open and covert attack to destroy the queen and her supporters. Mr. Ingram goes at length into the history of the conspiracies of that period, for the purpose of showing that it was these which destroyed the papal sentiment in England, prevented it from sharing in the Catholic revival, and made the nation permanently Protestant. The ruin of the Catholics in England was completed by the insistence of the popes throughout the seventeenth century upon their power to depose princes and by their refusal to allow Catholics to swear allegiance to Protestant sovereigns. The way was opened for relief acts only when in 1778 the English Catholics acknowledged the title of the House of Hanover to the crown and declared their "unalterable attachment to the cause and welfare of this our common country." In his treatment of this part of the subject the author's statements will meet with more general assent.

Insistence upon the strength of national feeling as opposed to extreme papal claims is justifiable in treating of the history of mediæval England. The best of the kings shared in and encouraged it. But their will was often thwarted or ignored. Many of the monarchs acted in collusion with the popes, thus nullifying the effect of the anti-papal legislation. This clearly appears in the history of the Statutes of Provisors and *Praemunire*. There was an interlacing of jurisdictions which was both important and characteristic of the age. Relations were not as clear cut as Mr. Ingram would have us believe, and this becomes evident as soon as one goes behind the mere words of the statute or dictum of the judge, and studies the real life of the clergy.

HERBERT L. OSGOOD.

*The Discovery of America, with some Account of Ancient America, and the Spanish Conquest.* By JOHN FISKE. Two Volumes. Boston and New York, Houghton, Mifflin & Co., 1892. — 516, 631 pp.

These volumes, both from the nature of their contents and from the large number of readers they have reached and will influence, must be considered as among the most remarkable of the Columbian anniversary year. The point of especial significance is that they are thoroughly imbued with the modern scientific spirit and with the doctrine of evolution. The works of Irving and Prescott, which alone compare with Mr. Fiske's in measure of popular success, described primitive America before *The Origin of Species* was published. So far as I am aware, this is the first general narrative history to treat of early American peoples from the vantage ground of the theory of evolution. Thousands of people will receive from these volumes a profound impression of the new light thereby cast upon old problems and of the new and varied interest imparted into the discussion of many questions hitherto esteemed of little importance. Formerly the manners and customs of the aborigines were subjects of curious study, but they could not be effectively correlated in a science of man. For Mr. Fiske's readers they become an intensely interesting revelation of the past life of the race at a stage of culture which has left only faint and obscure memorials in the Old World. In the study of classical and Hebrew antiquity we meet with odd bits of ritual, traces of obsolete customs, fading lines of social organization, survivals of many kinds which almost baffle explanation. Ancient America throws a flood of light on these matters, for there people were found, as we now know, living in a stage of culture in which these puzzling features of social life originated—a stage which the Greeks and Israelites had left behind them when their ascertained history begins. Mr. Fiske's opening chapter offers him the fullest opportunity to display the significance of the social and religious customs of the aborigines, and the results are laid before the reader with startling clearness. In the main they may be accepted, but as regards details some critical reserve is necessary. Mr. Fiske writes of palæolithic man, and especially of the so-called palæoliths, in a tone of greater certainty than he would use to-day, or than it would be safe to use considering the dubious nature of much of the evidence.

Mr. Fiske's treatment of the Northmen question is a most admir-

able piece of historical discussion, amply learned, critical, but not too skeptical, and pervaded with an atmosphere of sound common sense. In regard to the Zeni however, his conclusions will prove less acceptable. The tide of opinion seems to be turning against the authenticity of their voyages.

The third chapter traces the growth of intercourse between Europe and the East and is full of interest. The portion on mediæval trade might with advantage have been somewhat expanded. The mass of appropriate material contained in Heyd's *Geschichte der Levantehandels*, a rich mine of information on that phase of mediæval life, seems to have escaped Mr. Fiske's notice.

The chapter on "The Search for the Indies" opens with a skilful exposition of the theoretical difficulties confronting exploration, owing to false geographical ideas. This is followed by an excellent account of the work of Prince Henry the Navigator. Mr. Fiske decides that the first papal grant to Portugal of possession of her newly discovered lands was by Eugene IV in 1442, instead of by Martin V, as stated by Las Casas and Barros. The bull of Eugene IV is cited in Raynaldus and by Azurara (*Chronica do Descobrimento e Conquista de Guiné*, pp. 90-92). It was a grant of indulgences, not of territory, to those prosecuting the discoveries. Leo X, in his bull of 1514, which confirmed previous bulls, refers to bulls of Martin V and Eugene IV granting permission to trade with the Saracens, but apparently not bestowing any territory. The bull of Nicholas V (1452) is the earliest one cited by Leo as having granted territory.

In contrast with the opinion of Eratosthenes that the Atlantic was very broad, Mr. Fiske cites Seneca as holding the view that it could be crossed in a few days' sail. It seems to me that this inference is unwarranted by the context, which reads as follows :

Sursum ingentia spatia sunt, in quorum possessionem animus admittitur . . . . tunc contemnit domicilii prioris angustias. Quantum enim est quod ab ultimis litoribus Hispaniae usque ad Indos jacet? Paucissimorum dierum spatium, si navem suus ventus implevit. At illa regio caelestis per triginta annos velocissimo sideri viam praestat. . . .

The passage is purely rhetorical, comparing the smallness of the earth with the realm of mind, but saying nothing positive as regards the size of the earth. "Paucissimorum dierum," as contrasted with thirty years, might mean indifferently thirty, sixty or ninety days. But does it refer at all to a voyage across the Atlantic? Is not

the true meaning this : The longest journey man can take, from farthest west to farthest east, is a voyage of a very few days compared with the spaces of the heavenly region ? The fact that such a voyage would be broken by a land passage of a day or two at Suez does not seem to exclude this otherwise perfectly natural interpretation.

On pages 419-420, in presenting a calculation of the cost of the first voyage of Columbus, Mr. Fiske is misled by Harris. Las Casas says that the eighth part raised by Columbus was 500,000 maravedis. Harris estimates that 1,000,000 maravedis were equal to about \$59,000, "at present values." This gives a total cost of \$236,000—a conclusion which Mr. Fiske's sound critical judgment mistrusts, and he is inclined to reject the figures of Las Casas. The difficulty, however, lies in the excessively high valuation assigned to the maravedi. In 1529 Charles V sold his claim to the Moluccas to Portugal for 350,000 ducats, and stipulated that the ducats should be rated at 375 maravedis each. According to Cibrario's tables (*Economia Politica del Medio Evo*, II, 199) the ducat in 1529 had a specie value of 12.36 francs, or about \$2.34. This would give not quite six and one-third mills (\$.0063) as the value of a maravedi. On this basis the total cost of the expedition would reach \$25,200, an ample sum considering the purchasing power of money.

In discussing the Bull of Demarcation, Mr. Fiske suggests that the origin of the pope's claim to Apostolic authority for giving away kingdoms is closely connected with the fictitious Donation of Constantine. This is no doubt true as regards territory within the bounds of Constantine's empire ; but the right to bestow the possessions of heathen upon Christian princes was more naturally based upon the passage in Psalms ii. 8 : "Ask of me, and I shall give the heathen for thine inheritance and the uttermost parts of the earth for thy possession," etc. Boniface VIII based his assertions of the headship of the world, as expressed in the bulls *Ausculta fili* and *Unam Sanctam*, on Jer. i. 10.

On page 515 Mr. Fiske says : "At no time during the life of Columbus, nor for some years after his death, did anybody use the phrase 'New World' with conscious reference to his discoveries." This statement emphasizes an important phase of the geographical conceptions of the time, but it is not absolutely true. Peter Martyr, in 1494, begins the second letter of his first decade : "Repetis, Illustrissime Princeps, cupere te quae accidunt in Hispania de novo orbe cognoscere."

In a very thorough and careful review of the whole question of the disputed first voyage of Vespucci in 1497, Mr. Fiske makes out a strong case for accepting it as genuine. Harris, in his recent work, *The Discovery of North America*, takes a neutral position, but is apparently somewhat disposed to accept the first voyage.

The very lucid account of the naming of America omits one or two points of interest. The first is that Waldseemüller suggested two names: (1) *Amerige* ("*Amerige quasi Americi terra*"; i.e. *Americi* for *Americi*, and *ge*, Greek for land) that is, *Americ's Land*; and (2) *America*, the feminine form of *Americus*. In the second place, of the two forms, Waldseemüller distinctly preferred the clumsy Greek-Latin compound "*Amerige*" to the euphonious *America*. This is indicated by the fact that opposite one of the passages suggesting the names, we find the marginal title *Amerige* instead of *America*. (See fac-simile in Winsor's *Narrative and Critical History*, II, 168). Finally, one or two other geographers had the same preference. Schöner, in 1515, in his *Luculentissima quaedam Terrae Totius Descriptio*, etc. c. xi. fol. 60, writes "*America sive Amerigen*," *novus mundus*, etc. (Payne, *New World*, p. 211); and Nicolini de Sabio, in his edition of the *Cosmographiae Introductio* (Venice, 1535) indicates his preference for *Amerige* over *America* (Marcou, *Nouvelles Recherches*, p. 44).

Mr. Fiske's treatment of Columbus is sympathetic. Columbus as a man needs sympathetic treatment to secure simple justice. The true historical student has no desire to gloss over his faults; his object is the truth, but the truth set forth in proper proportions. He wants to get at the man as he was. Columbus had a large element of religious enthusiasm in him; he was a crusader after the crusades were dead; he saw visions and regarded himself as an instrument in the hands of God for bringing great changes to pass; his writings, especially towards the end of his life, become mystical and prophetic in tone. For all these things the nineteenth-century mind has little sympathy or patience. To pronounce a just judgment on Columbus therefore requires a mind both tolerant and sympathetic, finely discriminating and capable of fully appreciating in its historical setting the prophetic temperament.

The *Discovery of America* is a fitting introduction to American history. Its thorough and conscientious scholarship and its engaging style make it appeal alike to scholars and to the general reader, while the broad scientific thought pervading it marks it as a characteristic and significant product of the influence of Darwinism upon historical research.

EDWARD G. BOURNE.



*The Constitutional and Political History of the United States.*

By DR. H. VON HOLST. Translated from the German by JOHN J. LALOR. 1859-1861 : Harper's Ferry-Lincoln's Inauguration. Chicago, Callaghan & Co., 1892. — v, 459 pp.

This is the final volume of a work that has had and will have in the future a most profound influence on historical scholarship in America. Whether accepting or rejecting Professor von Holst's conclusions, American scholars must admit that he has placed the discussion of our constitutional development on a very high plane. It is the belief of the reviewer, as of probably a majority of American students of our history, that the author's interpretation of that history, so far as the slavery question is concerned, is radically wrong. A demonstration of this belief will require research more extensive, philosophy more profound, a dialectic no less subtle and moral earnestness no less sincere than that revealed in Professor von Holst's volumes. That these qualities will in time be forthcoming, there can be little doubt ; to have stimulated their manifestation will be the author's highest glory.

The present volume consists essentially of four groups of essays on incidents occurring between October, 1859, and March 4, 1861. The subjects considered are Helper's *Impending Crisis* and John Brown's raid, the party conventions and the elections of 1860, the errors of Republicans and Secessionists in reference to the probable effects of secession, and finally the attitude of Buchanan's administration and Congress on the withdrawal of the Southern states.

As to Helper's book and the Republican endorsement of it for campaign purposes, the author's judgment is somewhat of a surprise. His ingenuity in justifying anti-slavery manœuvres and in saddling responsibility for all our woes upon the slavocracy has been so conspicuous, that the reader is unprepared for such an opinion as this :

The recommendation of it [Helper's book] . . . by sixty-eight Republican representatives . . . was unquestionably an aggressive intermeddling in the domestic affairs of the slave states, whether they so intended it or not.

It is quite certain, however, that the final clause, which aims to save the virtue of the Congressmen at the expense of their intelligence, would not have appeared if they had been slavocrats.

Professor von Holst's view of John Brown and the Harper's Ferry incident are already familiar through a separate monograph (reviewed

in this *QUARTERLY*, vol. iv, p. 322). He regrets in a foot-note an apparent tendency away from the Abolitionist and war-time conception of Brown and his work, and feels confident that deep research will always confirm the apotheosis of Brown which is transferred from contemporaneous anti-slavery publications to the author's text. A necessary support of the moral-martyr view of Brown is the explanation of Southern feeling after Harper's Ferry that is embodied in the following passages :

The stroke had been dealt by not quite two dozen men; . . . it was a blow in the air . . . ; and yet the news of the occurrence had made the blood rush back to the hearts of these millions, who, in personal courage, stood second to no people on earth, as quickly as would the sudden appearance of some monstrous danger. Such an effect from such a cause can be explained only on the supposition that John Brown's act had sounded an alarm in every conscience that awakened it from its sleep. . .

[The South's] momentary involuntary terror was an annihilating condemnation of that institution [slavery].

Some months ago much less than "two dozen men" — in fact a single individual — appeared in the office of a wealthy New Yorker and made a demand based on a view that private property in movables was immoral. On refusal of his demand, he dropped a dynamite bomb and destroyed several lives, including his own, and considerable property. "It was a blow in the air," so far as the institution of private property was concerned ; and yet a thrill of terror ran through the hearts of hundreds of thousands of property owners of the utmost personal courage. The future historian, after a diligent perusal of the Anarchistic press of the day, will doubtless explain "such an effect from such a cause" as due solely to the awakening of conscience in the guilty owner of property, and the involuntary terror as "an annihilating condemnation of the institution."

The chapters touching the party conventions are characteristically lacking in any connected narrative of events, and at the same time characteristically rich in suggestions drawn from the study of episodes ordinarily left hidden in the shadow of the great spectacular incidents with which the period is crowded. While Professor von Holst perhaps overestimates at times the importance of Congressional debates, it cannot be denied that he has a marvelous faculty for tracing the play of political forces in the legislative activity of political leaders. Several instances occur in this volume where incidents in Congress, hitherto slightly regarded, are made to

throw very considerable light on the affairs of the time in the field of party politics.

Douglas, of course, continues in this volume to be the author's heavy villain. The Illinois senator's motion and speech in the Senate looking to some measure for protecting a state against conspiracies and invasions like John Brown's, are declared by Professor von Holst to constitute "a monument of infamy, compared with which the Kansas-Nebraska Bill scarcely deserves to be mentioned." Only those who have read the professor's account of the bill in question can fully appreciate the plight to which the unfortunate senator is reduced by this comparison.

In his seventh and eighth chapters the author treats of the wrong calculations of Republicans and Secessionists respectively, in the doubtful time following Lincoln's election. Here the author is at his best, and, keeping more or less in the background his Abolitionist sympathies, he presents an admirable summary of the excited thinking of the period. There is of course an underlying tone of suggestion that Republican errors were the natural outgrowth of noble aspirations, while the degrading influence of slavery was largely responsible for the mistakes of the Secessionists. So on pages 273 and 274 we are treated to a contrast of the "Puritanic glow of conviction" which characterized the Northern clergy, with the "coarse Biblical learning" and the "fanaticism" which were displayed in the Southern churches. But apart from such characteristic vagaries of the author, the fallacious estimates placed by each of the sections on the moral spirit, the political tenacity and the economic resources of the other are most fairly and philosophically considered. In speaking of the reliance which the Southern leaders placed upon slave labor in enabling them to put their whole white male population under arms, Professor von Holst does not notice how inconsistent this is with his theory, made so prominent in other parts of his work, that the South spent a large part of its time shuddering at the possibility of a servile insurrection. He does not make it appear that this possibility entered at all into the calculations of the Secessionists.

The concluding chapters of Professor von Holst's work are, it must be said, rather dreary. That devoted to "Buchanan and the Non-Coercion Doctrine" includes a long-winded polemic against Attorney-General Black's constitutional law, and against Buchanan's character and conduct in general, and his biographer's defence of him in particular. On the question of constitutional law, the pro-

fessor is ingenious and, assuming with him that the constitution was national in origin and essence, he is triumphant. But Black and Buchanan started from a wholly different assumption. As to the president's actual conduct, it is not difficult to prove that he was lacking in resolution. But the author makes no allusion to an important element of weakness in his position. A combination of Secessionists and Republicans in Congress could have impeached him. That a successful use of force against the South would have precipitated a movement in this direction, can scarcely be doubted. The general attitude of the Republicans certainly gave no assurance that they would not join such an enterprise, and in view of the prevailing incredulity as to the South's earnestness in withdrawing, Northern public sentiment could not be depended upon to sustain the president. There surely was something in these considerations to justify a naturally timid and peace-loving executive in staving off decisive action.

It is an unpleasant duty of the reviewer to call attention now, as was done a dozen years ago, to the unworthy dress in which the American translation of this great work appears. Paper and margins in this volume, as in its predecessors, are all that could be desired; typography and proof-reading are only less wretched than hitherto. The "scarcely vested threats" on page 27 compares very well with the "semi-lateral contract" of a former volume.

WM. A. DUNNING.

*La Femme au point de vue du Droit Public.* Étude d'histoire et de législation comparée. Par M. OSTROGORSKI. Ouvrage couronné par la Faculté de Droit de Paris. Paris, Arthur Rousseau, 1892.—8vo., 198 pp.

In M. Ostrogorski's discussion of the position of women in local self-government, published in this QUARTERLY a little more than a year ago (volume vi, page 677), a fuller survey of women's rights at public law was announced, and the present volume redeems the promise. The rights of women to the throne and to the regency under monarchic systems of government; their admission to political suffrage and their capacity to hold political office; the part given them in local self-government and in the purely administrative services of the state,—all these topics are examined from the historical and the comparative points of view. In the last two chapters the author considers, under the head of "individual public

rights," the legal capacity of women to petition the legislature, to form or take part in associations, to conduct newspapers, to study and to teach, and to enter the liberal professions—all matters of public law in European continental legislations, at least—and, under the caption "quasi-public rights attached to civil capacity," the right of women to act as guardians and as formal or "solemn" witnesses to documents of a public or quasi-public character.

The historical portion of M. Ostrogorski's work, though admirably done, is merely introductory to the examination and comparison of existing laws. His book is primarily and principally a study in comparative legislation, and it is a model of its kind. Not only are the laws of all the civilized states of the modern world considered, but they are elucidated by citations from debates, parliamentary reports and judicial decisions. Nor has the author confined himself to a simple collection of material. He has really compared the laws which he brings together. He has indicated how far the tendencies of modern legislations are in harmony and in what points the laws of the different states diverge. He has done even more than this: he has endeavored to formulate the ultimate principles upon which the existing harmony is based and to explain the divergencies. His work becomes, therefore, a contribution to inductive social philosophy.

It is for this last reason particularly that I term M. Ostrogorski's work a model of its kind. Just as the comparative study of early institutions and customs on the one hand, and that of legal history on the other, afford the clearest insight into the primitive consciousness of our race and the changing phases of its evolution, so the comparison of modern legislations gives us the most authentic evidence of the existing consciousness of civilized mankind; and the interpretation of that consciousness is one of the most important functions of modern sociology.

What then is the common sense of the world regarding the political powers so often claimed for women on the basis of natural right? With the chief conclusions of M. Ostrogorski the readers of the *QUARTERLY* are already familiar. In spite of the marked tendency of modern law to emancipate women from all purely civil disabilities, he finds no serious inclination to clothe her with political power. Wherever women have occupied thrones or exercised the powers of regency, their right has sprung from a confusion of the principles of public and private law, from the application to a political office of the rules of feudal law, *i.e.* of property law. In proportion as this confusion has disappeared, the tendency has been to

restrict the right of women to exercise monarchic power. What remains is a survival, explicable largely by the decrease of royal authority. Wherever, in earlier times, women voted for representatives in diets, estates-general or parliaments, it was because the right to vote attached to property. Their participation in communal affairs rested on the same ground. It was not the human being that voted and was represented, but the land. In proportion as suffrage has become personal—in proportion, that is, as the modern democratic idea has been realized—woman has lost her voice in public affairs. She has no direct political vote anywhere in the world except in Wyoming. She has an indirect political vote in the Isle of Man, in Austria and in Sweden, but only on the basis of property. Similarly the local suffrage is to-day granted to women only when the basis of representation is property or income. In England and many of her colonies, in the Germanic portions of the continent of Europe and in Russia, local suffrage rests upon this basis, and women have voice in the management of local affairs—in Germany, however, only in the rural communes. In the Latin countries and in the United States, where local suffrage has been assimilated to the general suffrage, women have almost uniformly failed to secure even the local ballot. The only important exception (besides Wyoming) is Kansas.

Women have been more successful, on the other hand, in obtaining a voice in the poor-law administration and in school elections. This is in part due, as M. Ostrogorski indicates, to the limitation of the suffrage in these cases to taxpayers. It is also due largely, in the United States at least, to the feeling that poor relief and school administration are non-political matters.

M. Ostrogorski's book is an illustration of the good results that can be obtained from prize-funds wisely administered. In memory of the Italian statesman, Count Rossi, at one period of his career professor of constitutional law in Paris, his widow bequeathed to the Paris Law Faculty a generous endowment, the income to be devoted to annual prizes, open to all competitors. The law faculty pursues the policy of assigning subjects for investigation. The subject in constitutional law for 1891 was that on which M. Ostrogorski has written, and his book received the first award of 1000 francs. It was declared to be "*un livre distingué, profondément réfléchi, d'une lecture attachante*"<sup>1</sup>—a judgment from which transatlantic readers will find no cause to dissent.

M. S.

<sup>1</sup> Faculté de Droit de Paris. Distribution des Prix: Concours de 1891. Rapport par M. Le Poittevin.

*L'Évolution Juridique dans les Diverses Races Humaines.*

Par CH. LETOURNEAU. Paris, Lecrosnier et Babé. 1891. — 8vo, xxii, 540 pp.

The industrious secretary of the *Société d'Anthropologie* has published in rapid succession a series of volumes which collectively cover a wide field of study. One is a discussion of *Science and Materialism*, another is a treatise on *Biology*, and a third is on the *Physiology of the Passions*. These serve as a scientific groundwork for the well-known volume on *Sociology based on Ethnography*. This, in turn, constitutes a general introduction to more special sociological works, namely: *L'Évolution de la Morale*; *L'Évolution du Mariage et de la Famille*; *L'Évolution de la Propriété*; *L'Évolution Politique dans les Diverses Races Humaines*, and finally, the present volume on juridical evolution. As the reader will at once surmise, M. Letourneau's studies bear much resemblance to Mr. Spencer's sociological works. His views and conclusions are in general agreement with Mr. Spencer's, though he is independent, and in numberless points of detail arrives at different results. The essential difference, however, is one of method. Mr. Spencer uses the ethnographic inductive method largely, but he is also deductive and philosophical. M. Letourneau has not so strong a grasp of general causes as has Mr. Spencer, but on the historical and ethnographic side he is more thorough and minute. His method is strictly ethnographical and his work must stand or fall according to the care and critical judgment that he has put into it. His position should have placed at his command practically all the materials in existence, and should have made him an expert authority on their relative values; but the impression left by his pages is in these respects somewhat disappointing. There is no discussion of the validity of sources used, nor any attempt, such as one finds in McLennan and Westermarck, to weigh critically the importance of evidence. The reader must simply take it for granted that M. Letourneau has made sure of his facts. There is no sufficient reason, however, to doubt that in the main the facts are as alleged, or that the conclusions drawn from them will in most cases be verified by further research.

In studies of this kind, moreover, there is a certain safety in the mere extent of the phenomena surveyed. The present work examines the evolution of justice in savage tribes, in the barbaric monarchies of ancient times in China, Arabia, Judea and Persia, in Greece and Rome, among the Slavic and Germanic peoples and under the feudal

system. The origin of justice and the more important stages of its development are found to be everywhere the same. The steps by which private revenge becomes social revenge should be a matter of familiar knowledge by this time, for they have been fully presented and discussed in recent years, even in semi-popular works like Judge Holmes's lectures on the *History of the Common Law*; yet M. Letourneau is able to impart a considerable degree of fresh interest to the subject by examining it in its relation to physiological reflex action. He shows that no line can be drawn where reflex action passes into conscious revenge, or between the reflex action that is merely individual and that which is essentially social. This is not only interesting; it is important, as throwing a new light on the position so vigorously maintained by Justice Stephen, in his *History of the Criminal Law of England*, that the feeling of vengeance toward criminals, so far from being wicked or a mere shameful survival of brutality that civilization ought to eradicate, is essentially moral and certainly indestructible. It must be rationalized and tempered, but must always remain the motive power of justice. The progressive rationalizing and tempering step by step with the socializing of vengeance is M. Letourneau's thesis, but in a few concluding words of speculation on the future of juridical evolution he goes quite beyond his facts and falls into the error that Justice Stephen warns us against. He complains that the courts still consider themselves charged with a mission of vengeance, and affirms that "future justice will not chastise; it will only work for social preservation and, if possible, for education." The belief is humane, but falls somewhat short of scientific precision.

FRANKLIN H. GIDDINGS.

*Imperial Federation: The Problem of National Unity.* By GEORGE R. PARKIN. London and New York, Macmillan & Co., 1892. — 12mo, xii, 314 pp., with map.

The subject of this book is probably the most important, although perhaps not the most pressing, political problem that confronts the world to-day. If, as Bluntschli says, "only in the universal empire will the true human state be revealed," then the nearest approximation to that empire that is at all probable or possible in the immediate future, the federated union of Great Britain and her colonies, must prove a matter worthy not only to be considered but even to be desired by us all.



While Mr. Parkin's volume must be regarded rather as a piece of special pleading than as an impartial study of "the problem of national unity," it must be said at once that he has treated his subject in a manner suitable to its greatness and dignity. He writes from abundance of information, in a liberal spirit and in a style that is distinctly pleasing. He has therefore produced what is not only a readable book, but also a valuable one apart from its special subject matter, for it contains a great deal of information about the present condition of the British colonies that will be of interest to readers who are not especially concerned about the outcome of the growing movement for imperial federation. Mr. Parkin is a Canadian, who has traveled widely in the interests of the federationist cause; he has therefore not relied entirely upon materials which any other man could gather in his study, but has given his book the permanent value that attaches to the impressions of a thoughtful and trained observer.

He discusses his subject in fourteen chapters, six of which treat of the general nature of the problem, and six of the special relations it bears to the mother country and the great colonial groups. The two remaining chapters are devoted to a criticism of the views of two pronounced opponents of the federationist scheme. There was some reason perhaps why Mr. Goldwin Smith should have a chapter to himself, headed by his own name; but there seems to be little reason for devoting a whole chapter to the views of Mr. Andrew Carnegie, and still less for entitling that chapter "An American View," even if the well-known Scotchman did employ the phrase in an article contributed by him to the *Nineteenth Century* some months ago.

I cannot enter, in a short notice like the present, into an analysis of the various chapters, or express an opinion as to the strength or weakness of the particular arguments advanced. Of the chapters devoted to the special colonies, those on Canada are naturally fullest and most interesting, although in them Mr. Parkin allows more weight to sentimental considerations than is perhaps safe. There is little that is sentimental in the chapter devoted to Australasia, but the absence of sentiment is made up by the humorousness of some of the quoted comments of Australian journalists on the subject of imperial federation. After the unnecessary discussion of the views of Mr. Carnegie the chapter on "Trade and Fiscal Policy" is least satisfactory. Mr. Parkin's expressions of opinion on the question of free trade and fair trade lack the ring of definiteness, and much

that he has to say of the financial policy of this country will need revision in the light of recent events.

The book has been well printed, for only two typographical mistakes have been found. On page 251, bottom line, *whom* should read *who*; and on page 308, line 11, *North African* should read *South African*. A very convenient commercial and strategic chart of the British Empire has been specially designed for the volume by Mr. J. G. Bartholomew, but neither author nor publisher seems to have thought an index necessary.

W. P. TRENT.

*The Dialogues of Plato.* Translated into English, with Analyses and Introductions, by B. JOWETT, M.A. Five volumes. Third Edition, revised and corrected throughout. New York and London, Macmillan and Co., 1892.

The possessor of a first or second edition of a somewhat costly work is accustomed to look askance at a third edition. He has seen in his time many editions in which the alterations in the series were so slight as to make it of little consequence whether he possessed the first or the last. Such is not the case here. Jowett's *Plato* was first published in 1871. An American reprint was soon issued by Charles Scribner's Sons from this edition, and in 1875 came the second English edition, "revised and corrected throughout." The alterations here were numerous, and exhibited the pains which the author was willing to bestow upon his work. In the years that have elapsed this translation has become a classic of its kind. The writer who wishes to quote a passage of *Plato* to English readers presents the version of Jowett as a matter of course. Such general acceptance gives the translator the full right to regard his publication as one of the great works of his life, and to desire to bequeath it to posterity in a form as near perfection as his care and thought and added years can attain. Such an idea was natural to one who can now dedicate his volumes to the pupils of fifty years of his life, and with this purpose he entered upon the task of this final revision. The magnitude of the task and the love with which it was executed may be seen from the statement embodied in Volume I: "The additions and alterations which have been made, both in the introductions and in the text of this edition, affect at least a third of the work," a claim which, from repeated tests and comparisons made in passages taken at random in the different dialogues, appears justified.

The additions are of several kinds. The preface is considerably enlarged by a more elaborate exposition of the principles upon which the author has proceeded in making his translation, and by a polemic against Dr. Henry Jackson's new theory of the "ideas" of Plato. The introductions to the several dialogues are given greater compass by a fuller discussion of the subjects suggested, as the stores of years of thought and reiterated reading are brought to bear upon them with that lucidity and comprehensiveness which have always characterized this part of his work. In addition to this general enlargement, the translator calls attention to eight new essays, two of which belong to the field especially treated by this *QUARTERLY*. These are "The relation of the *Republic*, *Statesman* and *Laws*" (vol. iii, ccxiv-ccxvii), which does not contain much that is new, and a "Comparison of the *Laws* of Plato with Spartan and Athenian Laws and Institutions" (vol. v, ccxiii-ccxxxvi). The latter is a valuable addition to the *Laws*, but admits of no little criticism. We may remark that in the comparison of Cretan, Spartan and Athenian laws, the statement that those of Crete are "so little known to us that . . . there is only one point, *vis.* the common meals, in which they can be compared," seems to argue an ignorance of the great inscription of the Gortynian Code, published some years ago, and furnishing many interesting points of comparison with the *Laws* (see *American Journal of Archaeology*, 1885-86). Again, when among the sources of our knowledge of Athenian law "a few inscriptions" are classed, we feel that the *corpus* of Attic inscriptions is very much underrated, to say the least; and to omit Isaeus from the orators who are cited as "sources," is to give the play without Hamlet. The latter is simply oversight, but the former comes from relying too much on authorities as old as Telfy (1868). Sometimes Professor Jowett allows himself to make a statement which is not sufficiently precise. It is said for instance (p. ccxiv), that "in all private suits he [Plato] gives two appeals, from the arbiters to the courts of the tribes, and from the courts of the tribes to the final or supreme court (xii, 956). There was nothing answering to this at Athens." Appeal from a public arbitrator at Athens was admissible at any time, but not from a dicastery.

In the previous editions of this translation the spurious *Second Alcibiades* and the *Eryxias* were omitted. They have now been supplied from the pen of Mr. Knight, who has served as Mr. Jowett's secretary, and has done notable service in many ways, especially in the enlargement of the index. Although the *Second Alcibiades* and

the *Eryxias* have no claim to be ascribed to Plato, they probably fall within two or three generations later, and contain thoughts which have an interest for us from their modern ring. The *Second Alcibiades* deals with the difficulties about prayer which have perplexed Christian theologians, and the *Eryxias*

may claim the distinction of being, among all Greek or Roman writings, the one which anticipates in the most striking manner the modern science of political economy and gives an abstract form to some of its principal doctrines,

as for instance that "wealth depends upon the need of it or demand for it," that "wealth is relative to circumstances," that "the arts and sciences which receive payment are likewise to be comprehended under the notion of wealth."

Finally we have to speak of two additions to the form of the work which render this edition invaluable: first, the subject-headings to the pages and the marginal analysis; second, the index. The reader of Plato knows well how easily the points of the argument may be lost or become confused amid the meandering form, the quick turns, the sudden sallies, the wit and the irony of the dialogue; how often the grapes elude the sight in the luxuriance of the foliage and the gadding of the vines. To correct this the translator has introduced the expedient already employed by him in his Thucydides and in his *Politics of Aristotle*. In the headings to the pages, substituted for the mere name of the dialogue in the earlier editions, the subjects are treated in their larger aspect, often with a pungency and wit which make them cling to one's memory like burrs. The marginal analysis enters more into details, and forms a succinct commentary upon the text, holding a close rein over it as with the hand of a master who, as he has himself said, has, more perhaps than others, had the privilege of understanding it. Here the students find a help which he cannot easily overrate. We may say almost as much of the index. Each of the earlier editions contained an index, but they were meagre compared with this, the number of pages being extended from 61 to 175. All who have had to delve among the *realien* of an author and have not had before them the results of others' studies in the same direction, can best appreciate what this means. A novel feature for an index is the introduction of a general *résumé* of Plato's views of important subjects as a whole, sometimes extending to several columns and forming an addition to the usual index article. Among the subjects thus

treated may be mentioned: dialectic, education, god, government, the idea, justice, the soul, the state, the cardinal virtues.

Dionysius of Halicarnassus has said that Plato did not cease to smooth the locks and adjust the tresses or vary the braids of his comely creations, even till he was eighty years of age, holding himself responsible to time and envy that test all things. As we listen to his translator while expounding the principles upon which he has worked, and test the results from passage to passage in the several editions, we feel that something of the same loving care and restless solicitude have actuated him. Words are altered, sentences re-written or broken up and re-formed, one form of expression exchanged for another with inexhaustible pains. Much of this is due to his effort after perfection of form. In his own words,

the work should be rythmical and varied, the right admixture of words and syllables, and even of letters, should be carefully attended to; above all it should be equable in style. There must also be quantity, which is necessary in prose as also in verse: clauses, sentences, paragraphs, must be in due proportion.

Frequently, however, we see a desire to reach a closer approximation to the original, from which his earlier versions would often depart without necessity; sometimes, a desire to correct a mistake. One instance may be cited to exhibit some of his methods. The well-known passage from Hesiod (Op. 289) is quoted by Plato in the *Protagoras* in rhythmic but not full metrical form. Our translator's first version was:

Hardly can a man become good, for the gods have placed toil in front of virtue; but when you have reached the goal, then the acquisition of virtue, however difficult, is easy.

This remains unchanged in the second edition, except that "when you have climbed the height" is substituted for "when you have reached the goal." Now it appears in quasi-metrical form, with some padding to make it go:

On the one hand, hardly can a man become good,  
For the gods have made virtue the reward of toil; -  
But on the other hand, when you have climbed the height,  
Then to retain virtue, however difficult the acquisition, is easy.

Here a mistake in the meaning of the Greek has been corrected, but we have the maladroït expression, "however difficult the acquisition." In all cases the translator has rendered the original

"sweat" by "toil," thus following the principle which he lays down that "metaphors differ in different languages, and the translator will often be compelled to substitute one for another, or to paraphrase them." Spenser is bolder (*Faery Queen*, II, 3, 41):

Before her gate High God did Sweat ordain,  
And wakeful Watches ever to abide:  
But easy is the way and passage plain  
To Pleasure's palace; it may soon be spied,  
And day and night her doors to all stand open wide.

The publishers have done their part in paper, type and general make-up to do honor to the translator, who "may be excused for thinking it a kind of glory to have lived so many years in the companionship of one of the greatest of human intelligences."

A. C. MERRIAM.

*Les Destinées de l'Arbitrage International depuis la Sentence rendue par le Tribunal de Genève.* Par E. ROUARD DE CARD. Paris, G. Pedone-Lauriel, 1892. — 8vo, 264 pp.

This work forms the thirtieth volume in Pedone-Lauriel's valuable *Bibliothèque Internationale et Diplomatique*. It is its author's second publication on international arbitration. His first appeared in 1877, and is entitled: *L'Arbitrage International dans le Présent, le Passé et l'Avenir*.

The object of the work now under review is, as the title indicates, to show the progress that international arbitration has made since the Geneva Tribunal. It is most creditable to the two great English-speaking nations of the world, that that tribunal stands as a sort of high-water mark in the progress of the subject. For it was by the arbitration at Geneva that the substitution of reason for force in the adjustment of grave international disputes was most clearly presented as a practicable measure. It is true that those who are disposed to decry arbitration have rung the changes on the fact that the decision rendered by the Geneva Tribunal was unsatisfactory to England. It would be as sensible to object to the existence of judicial courts, because the party who fails in a lawsuit generally is dissatisfied with the judgment. The test of the success of an arbitration is not whether both parties are satisfied with the award, but whether they accept it and abide by it as a beneficent solution of controversy. That the United States and Great Britain have so considered the award of the Geneva Tribunal, is shown by their whole subsequent

conduct, of which the latest illustration is the pending arbitration as to Behring Sea; that the world has so considered it, the work now before us affords abundant evidence.

The volume is divided into seven chapters, the first of which is devoted to the propagandism of the last twenty years, by peace societies, arbitration leagues and international associations, including such eminent bodies as the Institute of International Law and the Association for the Reform and Codification of the Law of Nations, the latter of which, it is proper to say, had an American origin. In other chapters collections are presented of resolutions adopted by various congresses and conferences and of motions made in the legislative assemblies of various countries, in favor of arbitration; of arbitral clauses embodied in divers conventions; and of permanent treaties of arbitration. But of most importance, as I am compelled to think, is the brief description of the recent arbitrations themselves.

In this part of the work a brief report is given of thirty-four international arbitrations since the date of the award at Geneva. These arbitrations related to the delimitation of boundaries and the possession of territories, two fruitful causes of war; to the seizure of ships, the confiscation of cargoes, injuries done to private persons, rights of navigation, the liquidation of accounts, and rights of fishery. Large as the number is, I do not find two arbitrations which fall within the period to which our author's volume belongs, and which would have brought the total up to thirty-six. One of these is the submission by Great Britain and Nicaragua to the Emperor of Austria, in 1880, of a controversy as to the rights of Nicaragua in the Mosquito territory under the Treaty of Managua. The emperor rendered a decision the full text of which may be found in a British blue-book. The other omitted case is the reference by the United States, Great Britain and Portugal to three Swiss jurists of claims against Portugal growing out of the seizure by that government of the Delagoa Bay Railway and the annulment of its charter. Though I am not aware that the text of the protocol of submission has been published, the British government has presented to Parliament the prior correspondence, which has been printed in a blue-book, and all the governments concerned have officially announced the fact of the submission.

In addition to the seven chapters already mentioned, the work contains an appendix in which is printed a collection of important documents illustrative of arbitration, its methods and results. On the whole the volume is a hopeful sign of progress in international affairs.

JOHN BASSETT MOORE.

*Justice*: being Part IV of the *Principles of Ethics*. By HERBERT SPENCER. New York, D. Appleton & Co., 1892. — viii, 291 pp.

In this work Mr. Spencer fits into his general system the principles of political philosophy which he has made familiar through *Social Statics*, *The Man versus the State*, and other writings. Following in appearance the *Data of Ethics*, it consists essentially of the application of the principles therein formulated to the conditions of social life. There is little in the work that is new to Mr. Spencer's readers; but his views are here presented in their final form as part of his synthetic philosophy.

The twenty-nine chapters of the work fall into three groups, having for their respective topics the formula of justice, the rights deducible from this formula, and the nature and duties of the state. For the individual the essence of justice is found in the principle of evolution in general, that each shall receive the benefits and evils of his own nature and consequent conduct. As modified by social conditions, the formula of just liberty is this: "Every man is free to do that which he wills, provided he infringes not the equal freedom of any other man." There is nothing especially new in this conception, and Mr. Spencer freely admits that, while his method and point of view are his own, his conclusion has been anticipated by Kant.

As to "rights," Mr. Spencer insists that the term is only applicable to the particular varieties of freedom that are deducible from this formula of justice. Rejecting Bentham's use of the term, he derives law from rights, not rights from law. This matter is obviously a mere question of words. There are two distinct ideas involved: (1) privileges based on nature, reason or synthetic philosophy, without reference to any sanction bestowed by the state; and (2) privileges sanctioned by the state, without reference to any derivation from nature, reason or synthetic philosophy. The two classes are neither mutually exclusive nor wholly coincident. Mr. Spencer wishes to apply the term "rights" only to the first class; Bentham and the analytical jurists use it only of the second. The latter thinkers were the first clearly to distinguish the two classes, and it would seem reasonable that their nomenclature should have the preference by priority of usage. It is a pity that Mr. Spencer could not have devised distinct terms to designate the two ideas, instead of falling back into the confusion of the natural-law era.

Of rights, in the meaning he assigns to the term, the list which he



gives does not differ from that which has been familiar for a century or more in Bills of Rights and such documents. "Life, liberty and property" practically includes them all. Mr. Spencer's wide ranging among the lower animals and primitive men has brought to light no rights under the law of nature that the social-contract philosophers had not already discovered with much less effort by pure speculation. That the synthetic philosophy confirms the ethical formulas of the eighteenth century is, of course, important. That its conclusions correspond with such exactness to those formulas, seems to give strength to the claim that they embody the ultimate truths of political science. But Mr. Spencer sets forth as the very basis of his thought the principle of eternal development. The philosophers of last century built on the conception of immutable reason. For them it was easy to insist that the doctrines they presented were true for all time and all circumstances. When the arch-evolutionist makes such a claim, he involves himself instantly in self-contradiction. It becomes clear that the striking correspondence between his "natural rights" and those of the earlier thinkers results not from the principles of his general philosophy, but from the conservatism which leads him, in spite of those principles, to take up against the tyranny of the state the very weapons which the men of last century employed against the tyranny of the monarch. Almost every chapter of the present work is permeated with the contradiction between evolution in general and absolute immobility in politics.

The nature of the state is not very distinctly determined in this work. Like the "free-swimming *Medusa*," a "small larva of the Annulose type," and certain "low aquatic *Algae*," the state may have different natures under different circumstances (pp. 181-182). Human societies arise from three distinct motives: the desire for companionship; the need of combined action against enemies; and the desire for mutual aid in facilitating sustentation. Whichever of the motives is dominant in any state,

the end to be achieved by the society in its corporate capacity, that is, by the state, is the welfare of its units; for the society having as an aggregate no sentiency, its preservation is a desideratum only as subserving individual sentiences. [Page 186.]

The state here appears to be thought of as organized society, which is an intelligible, if not a novel, conception. But while far-reaching conclusions are drawn from the assumption that this organism has

no aggregate sentiency, it is a little confusing to find several references later to the "aggregate will" (pages 189, 220). A psychology of the state which ascribes to it will without sentiency is of doubtful value.

On the denial of sentiency to the state depends Mr. Spencer's denial of any state life the perfection of which can be a topic of ethical doctrine. To him the personality of the state is an absurdity, though his references to the "aggregate will" seem to indicate a difficulty in avoiding entirely all influence of the conception. International relations have no place in a system of ethics. The concept "nation," indeed, is not defined, and the nearest approximation to any ethical theory as to the relations of nations is that in reference to the struggles of races.

However desirable it may be that the superior races should conquer and replace the inferior races, and that hence during early stages aggressive wars subserve the interests of humanity; yet . . . the subserving of such interests after this manner must be classed with the subserving of life at large by the struggle for existence among inferior creatures—a species of action of which ethics takes no cognizance. [Page 189.]

It certainly simplifies very greatly the function of the political moralist if he can view with fatalistic indifference such struggles for national unity as those which this century has seen in Europe and America. While this seems in general to be Mr. Spencer's position, he reveals from time to time very positive views as to the morality of Great Britain's policy toward less civilized peoples, and in one instance stigmatizes her colonial policy as involving "political burglary." This expression may be purely figurative, but the general thought does not harmonize exactly with the attitude of ethical indifference to race conflicts.

As with the nature, so with the constitution of the state, Mr. Spencer can lay down no doctrine which is applicable under all conditions. The requirements of the militant and those of the industrial type are altogether different. Autocracy or oligarchy is necessary to the former; to the latter a form adapted more to protection than to coercion. But the common notion that for the maintenance of equal rights there should be an equality of powers among individuals, Mr. Spencer holds to be erroneous. In other words, there is no basis in ethics for the so-called "political rights," and the democratic principle of representation of individuals gives no assurance of justice.

The duties of the state Mr. Spencer deduces by strict logic from his first principles. They may be summed up in a single phrase, the maintenance of justice, *i.e.* the securing to each individual the opportunity to attain as complete a life as he may. More than this the state cannot do without transgressing justice. His deduction here is as clear and symmetrical as Plato's development of justice and state duty in the *Republic*. Indeed, wide apart as are their conclusions, Mr. Spencer and the Greek philosopher present some striking analogies. Each works out a system of abstract justice applicable only to an ideal state. Plato's ideal is Sparta of 450 B. C., modified and generalized; Spencer's is England of 1850 A. D., modified and generalized. In one system dialectic, and in the other evolution, is the trusty *deus ex machina* which appears at every critical juncture to facilitate the movement of the play.

But Spencer is no more happy than Plato in reconciling his system with actual conditions. His criticism on what he conceives to be the dominant political philosophy of the time reveals a painful misapprehension of that philosophy. Because politicians sometimes seek to violate general liberty in behalf of special interests, he thinks that the theory of state omnipotence is all wrong. He cannot conceive that this omnipotence is available for the protection of liberty and justice as well as for attacks upon them. Half the declamation he directs against the state applies in fact only to the government. No one worthy of consideration claims omnipotence in any sense for the body of persons into whose hands has come temporarily, through methods more or less complicated, the authority to wield the power of the state. The state is distinct from the government; and if the organization of the modern state is not the most perfectly adapted to the maintenance of justice as defined by Mr. Spencer, it conforms in some measure at least to his ideal.

With decline of militancy and rise of industrialism [he says] . . . there have gradually become possible and have gradually arisen multitudinous voluntary associations among citizens for discharging numerous kinds of functions.

There are those who believe that a state is some such voluntary association, and that the maintenance of justice — even Mr. Spencer's own justice — is dependent on the number and character of the functions assumed by this association at any given time. They assert that voluntary associations embracing less than the whole of a community are very apt to interfere with the "natural rights" of those

individuals not included in them, and that there is greater equity, even if less economy, when certain functions which could be discharged by private organizations are discharged by the commonwealth.

WM. A. DUNNING.

*Lo Stato Moderno.* By PROFESSOR ATTILIO BRUNIALTI. Turin, 1891. — 140 pp.

In this work we have a concise and useful presentation, from a wholly modern standpoint, of the main principles of general political theory. The author starts with a definition of the state. Under this term he includes three attributes: first, an assembly of men, whose number is indefinite, but whose character is all-important ("La famiglia, la tribù, l'orda non bastano a costituire lo Stato"); second, a quantity of land in permanent relation with the population; third, the legal bond, the *vinculum juris*. In this definition Professor Brunialti is in accord with the soundest thought of the present day.

The body of the monograph is divided into three parts. In the first, the author describes the historical development of organized political life from its origins in Egypt and Palestine, through classical antiquity and feudal anarchy, down to the modern era. From this sketch he concludes that the epoch of the modern state begins in England in 1688, in America in 1776 and in France in 1789. After this historical synopsis the author traces, in the second part, the development of theory concerning the origin of the state. This method of treatment recognizes that the history of political philosophy is only of value to political science when studied in relation to the development of political institutions. Political philosophy and constitutional history complement and explain each other. Bodin's theories can be fully understood only in relation to the condition of France at the time of the religious wars. On the other hand, the revolution of 1789 appears clearly inevitable only when the ideas and all-pervading influence of Rousseau are grasped. While the author has fully adopted the method of considering both history and theory, he has erred in separating the two in his work. It would have been much better had he combined his first two chapters, and side by side traced chronologically the development of the state in fact and in theory. The evolution would have been clearer and much repetition would have been avoided.

In the third part, the author discusses the modern state. At the present time two theories alone remain to explain the nature of the state, the one regarding the state as an organism independent of the individual will, the other regarding the state as based on a tacit contract. We find in the state all the essential characteristics of the individual organism — evolution, reproduction, growth and decay, though it differs from physical organisms in that it lives and acts for the good of its component elements. But at the same time the state is based on the free will of the citizens. The two theories as to its nature are combined in the conception of "*lo Stato organico contrattuale.*" Of the modern state, conceived in this way, the chief characteristic is that it is national. With patriotic pride Professor Brunialti concludes his monograph with a description of Italy. It realizes all his ideals: it is organic, it is based on the free will of the citizens and it is national.

Professor Brunialti is in general very accurate. There are occasionally statements, however, to which exception may be taken. He causes Grotius to usurp Hobbes' place in the triad of great social contract philosophers. It is true that Grotius mentions the contract; but his discussion of the nature of the state is merely incidental and introductory to the theory of natural law. Hobbes, on the other hand, laid special stress on the contract, and it is the cardinal point of his constructive philosophy. Again, while Professor Brunialti shows familiarity with the works of our American scientists and statesmen, such as Lieber and Woolsey, Hamilton and Webster, yet he has fallen into an error common to many Europeans. Misled by our ambiguous nomenclature, he fails to perceive the real position of the commonwealth in the United States. He evidently regards the separate states not as organizations for local government, but as members of a confederation. Our commonwealths, accordingly, are discussed on the same plane with independent nations.

The most remarkable point about the book is the author's erudition, rivaling even Cossa's. He has delved into the literature of all ages and countries. Aquinas and Spencer are discussed with equal freedom. John Fiske is quoted in juxtaposition with Schaeffle. This omnivorous reading does much to render the book at once very interesting and very suggestive.

GEORGE LOUIS BEER.

## BOOK NOTES.

PROFESSOR DUNBAR, of Harvard University, deserves the thanks of all economic students for reprinting Cantillon's *Essai sur la Commerce* (Boston, Ellis, 1892). Although the importance of Cantillon has been somewhat exaggerated ever since Jevons wrote his famous article in the *Contemporary Review* in 1881, the book contains much to interest the historian of economics. The reprint is supposed to be an exact reproduction of the original. While the resemblance of type is fairly good, the similarity in the general appearance of the book is not so marked, owing chiefly to the fact that in the original the page is both shorter and narrower. Fidelity to the original, moreover, would have demanded the omission of the inserted sentence on the title page, "*en réalité composé par de Cantillon.*" This is obviously the work of some owner of the particular copy from which the reprint was made, and it does not occur in any of the other copies which we have seen.

Dr. Irving Fisher republishes from the Transactions of the Connecticut Academy, Vol. IX, *Mathematical Investigations in the Theory of Value and Prices*. The book presupposes on the part of the reader considerable knowledge of mathematics and acquaintance with the theories of the mathematical economists such as Jevons and Walras. Dr. Fisher's chief claim to originality is in substituting mechanical for graphical illustrations. The remarks on the utility of mathematical method in economics are excellent. The author thinks that mathematical treatment will develop a higher economics, which will be the chosen field for a few investigators and will bear the same relation to ordinary economics that mathematical physics does to ordinary physics. A bibliography of mathematico-economic writings (extended from Jevons) completes the volume.

There is nothing new in the opinion, supported by Adolphe Houdard in his *Premiers Principes de l'Économique*, (Guillaumin et Cie) that political economy, as it has been presented for more than a century in the standard writings, might be resolved into an abstract science of economics and a concrete science of economic sociology

or social economy, but he has rendered a good service by pointing out clearly the advantages that each science has to gain by the suggested separation and specialization. M. Houdard's own volume is concerned strictly with the abstract science of wealth. It is elementary, "orthodox," and admirably clear in its definitions and explanations.

In countries like England and the United States, where economic competition is in great part between equals, the usury doctrine has well nigh received its death blow through the theories of modern industry. But in some of the continental countries, where inequalities are far more marked, the reaction against *laissez faire* in loans has made itself felt. The latest example of this retrograde movement is seen in *Der Wucher und seine Gesetzgebung*, by Hermann Blodig (Vienna, Hölder, 1892). Dr. Blodig's concise history of the usury doctrine adds nothing to our store of information. But when he discusses the reasons and provisions of the modern usury laws in Austria, Germany, Hungary and Switzerland, he is breaking comparatively new ground. Almost all his reasoning refers to the peasants, and he upholds the necessity of some kind of usury laws in cases where undue advantage is taken of dire distress and where there is an obvious inequality between the service and the counter-service. We must be careful not to apply the reasoning of Wall Street to the peasant communities of Eastern Europe.

In *West Barbary, or Notes on the System of Work and Wages in the Cornish Mines* (London, Frowde, 1891), Mr. L. L. Price describes a curious survival of an earlier industrial system. In the tin and lead mines of Cornwall the remuneration of the laborers takes the form of "tutwork" or "tribute." "Tutwork" is an arrangement whereby a body of laborers bid for a certain amount of work at Dutch auction. The men are credited with the contract price of the bargain, they are charged for materials and cost of hauling the rubbish to the surface, and the remainder is divided among them. "Tribute" is a system of percentage of the price realized from the ore. Mr. Price describes the origin, the advantages and the drawbacks of this system, which forms a distinct chapter in the history of wages. He shows the gradual change in the newer form of "tutwork" and is inclined to the belief that the system will be only slowly modified. The monograph is carefully worked out and deserves a wide notice.

Professor Otto Warschauer, of Darmstadt, has begun what promises to be a comprehensive history of socialism under the title

*Geschichte des Socialismus und Neueren Communismus* (Leipzig, Fock, 1892), and has just published the first of ten or twelve instalments of the work. This first part is devoted entirely to Saint-Simon and his movement. The monograph is written in a rather popular style; but it is difficult to find anything either in the exposition or in the criticism which can really be called a new contribution to the subject. When the author reaches some of the later and less well-known writers this objection will no doubt be removed. The monograph is eminently clear and readable.

Not the least valuable of the recent issues of the Social Science Series is the republication, in a double number, of Lloyd Jones' *Life, Times and Labors of Robert Owen* (London, Swan Sonnenschein), edited and revised by the author's son. It contains, taking it all in all, the fullest and best account of Owen's eventful career yet published. The especial competence of Mr. Lloyd Jones for such a task is evident from his long and close connection with the co-operative movement in England, which in its essential features was virtually the development of Owen's fundamental idea. An attractive feature of this edition is a fac-simile reprint of one of the famous labor exchange notes, recalling a curious experiment which, like that of Proudhon in France, soon came to a disastrous end.

Dr. E. R. L. Gould, of Johns Hopkins University, in *The Social Condition of Labor* (Studies in Historical and Political Science, 1893) analyzes the recent investigation of the department of labor on the cost of production of iron and steel in Europe and the United States. Dr. Gould was at the head of the European portion of the work and speaks, therefore, from personal experience and extensive knowledge. His conclusions are important. The American laborer receives higher wages than the European, lives in a better house, gets better food for less money, spends more on books and newspapers, and economizes less. The foreign-born laborer is better off in this country than at home, and in some cases is better off than the native-born American. At the same time the cost of labor is not appreciably greater here than abroad. This prosperity is due to the intelligence and energy of the laborer. "We should give the principal credit of the higher wages in America, neither to the manufacturer, nor the tariff, nor any other agency, but to the workingman himself, who will not labor for less than will enable him to live on a high social plane."

The two latest numbers of the studies in political science edited by Professor Elster of Breslau and selected from the doctor disserta-



tions of German universities are *Die Finanzverwaltung der Grafschaft Luxemburg im Beginne des 14. Jahrhunderts*, by Martin Mohr, and *Die Nationalgüterveräußerung während der Französischen Revolution*, by Professor Boris Minzes (Jena, Fischer, 1892). Mohr's monograph gives a good picture of early mediæval fiscal administration. The period under review marks the evolution of the manorial economy into the wider territorial or provincial relations. We therefore find, as might be expected, a mixture of revenues from the incidents of feudal tenure together with the beginnings of indirect taxation. Students will also find a good example of the mediæval confusion in the monetary system and the standards of weights and measures. The monograph embodies a painstaking collection of a particular set of local facts, which will serve to illustrate the general theory of fiscal evolution. Professor Minzes' monograph deals with a far more comprehensive topic. In an introductory chapter he gives a summary of the conflicting theories and statements on his subject, and follows this with a statistical investigation based on documents in a number of local archives. Minzes shows that at the outbreak of the revolution the third estate already possessed a large part of the land, or were in a fair way to obtain it; but that the peasants were practically ruined and in the hands of the feudal lords or the growing class of capitalist farmers. Now suddenly about two-thirds of France was confiscated and the land thrown on the market. Although Minzes is unable to ascertain the exact quantity of land sold, or the exact proceeds of the sale, he is able to show from the archives of one or two departments that the purchasers were in large measure non-agriculturists, like bankers, merchants, officials, *etc.*, and that while the significance of the break with feudal conditions cannot be overestimated, the benefit to the husbandmen through this particular measure has been greatly exaggerated. The real importance of the confiscation and sale of the feudal and ecclesiastical property was indirect rather than direct.

An important work has been begun by M. Charles Gomel in his *Causes Financières de la Révolution Française* (Paris, Guillaumin, 1892). The present volume treats of the ministries of Turgot and Necker. M. Gomel makes good use of the pamphlet material and the speeches in the provincial parliaments, and elaborates a very full and interesting, although necessarily not an engaging, picture of the financial condition of France before the advent of Turgot. The efforts and the failures of Turgot, the influence of the Physio-

crats and the minor reforms of Necker which resulted in his first disgrace are successively brought before us. Future volumes are to deal with the comptroller-general, Necker's second ministry and the work of the Constituent Assembly.

An interesting and little-known chapter of economic history has been opened by Dr. J. T. Kussaka in his monograph on *Das Japanische Geldwesen* (Berlin, Prager). The author contends that the decimal monetary system was introduced in Japan in A.D. 767, centuries before its adoption in Europe. In the introduction of metallic money, in the contest between the feudal and the central prerogatives of coinage and in the debasement of the money at various times, Japanese history, in its main outlines, presents features quite familiar to Europeans. Paper money seems to have been introduced from China in 1696. It took the form of legal-tender certificates called *hansatsu*, redeemable sometimes in coin, but frequently in produce, especially rice and other commodities, and in some cases in umbrellas. The paper naturally depreciated until it became well-nigh worthless, and was frequently denuded of its legal-tender qualities by the powerful *daimios*. The second part of Dr. Kussaka's monograph deals with the recent reform of the monetary situation. The author believes that Japan must retain for the present the silver standard, and he approves of the recent change in the national bank system, which until 1883 was modeled on the American plan, but which has lately been endowed with the characteristic features of the English system.

The second edition of Maurice Block's *L'Europe Politique et Sociale* (Hachette et Cie) is an entirely new work. Statistical tables are brought down to the latest date for which the material has been available. As it stands now the work is a scientific, comprehensive and well arranged descriptive sociology of Europe. The first part is an account of the present political organization of Europe, including governmental arrangements, territory and population, finance, army and navy. The second part describes the economic, and the third the social organization. In the latter are included the statistics of relative incomes of the social classes, the moral and educational statistics, and a brief account of various reform movements and agitations.

The third edition of Dr. Charles Letourneau's *La Sociologie d'après l'Ethnographie* (C. Reinwald et Cie) has been revised and corrected in minor details, to bring it into line with late ethnographical results. The book is almost wholly descriptive in its method,

and is already well known as the most convenient manual that we have of the social life of tribally organized communities.

The *Report of the House Committee on Immigration and Naturalization* (Washington, 1892) is mainly an investigation of the expenditures made towards fitting up Ellis Island as a receiving place for immigrants. On the general question the committee regards the present inspection of immigrants as inadequate. Out of 476,658 immigrants arriving in the United States from April 1, 1891, to January 1, 1892, 1003 were rejected as paupers, or liable to become a public charge, and 713 under the contract-labor law. 2401 were admitted on bond. The committee denies that there is any lawful authority for the last course of action. The committee recommends an inspection abroad, holding the steamship companies responsible, and an inspection of the immigration overland. The most amusing bit of testimony is that of Mr. Louis Schade (page 667), who, after a lapse of thirty-five years, re-appears with his theory of a natural increase of 1.38 per cent per annum of the population of the United States. Applying this to the white population of 1790 (3,231,000) he reaches the figure for 1890 of 12,726,033 as the descendants of the original colonists. Adding eight million negroes and five million as margin, Mr. Schade concludes that 25,000,000 represents the descendants of the original inhabitants (white and colored) and 40,000,000 represents the immigrants since 1790 and their descendants. To the question whence came these 40,000,000, our statistics of immigration accounting for only twelve to fifteen million arrivals, Mr. Schade had no answer. Dr. Jarvis long ago pointed out (*Atlantic Monthly*, 1872) that in order to provide Schade's foreign population at successive censuses, every female immigrant between the ages of twenty and forty must have borne during the first decade eighteen children each year; from 1800 to 1810, ten children each year; 1810-20, one child every sixteen and one-half months, etc.

Dr. Albert Leffingwell has presented in a popular way in the little volume entitled *Illegitimacy and the Influence of Seasons upon Conduct* (Sonnenschein) the ordinary statistics of illegitimate births in England, Scotland and Ireland and of the prevalence of suicide, insanity, crimes against the person and births, in the spring and summer months. He advances no new theory in regard to the first phenomenon, unless it be what he calls heredity, viz. that those portions of England and Scotland conquered by the Danes show a heavier illegitimacy than those settled by the Saxons. But, as he

says, if this influence has continued to the present day, it shows "that the admixture of race, upon which we lay so much stress, may indeed have been far less than we have supposed." But a few pages further on he makes the bold prophecy that the African in the United States will before half a dozen centuries have completely merged his race in the three hundred millions of the North American continent. Dr. Leffingwell, in quoting a statement of Sir G. Graham, in 1845, in which the United States, in respect to statistics of health and life, are placed on the same footing with Asia and Africa, observes that the criticism "is at present not quite fair ; for as regards Japan there are better vital statistics obtainable to-day than for the United States of America, where the only record of vital statistics for the entire country is made but once in ten years." These are "bitter words but true."

The Italian bureau of statistics has just issued the *Cause di Morte* for 1890 and 1891, with an introduction containing summaries of general demographical interest. The death rate in 1891 was 26.21 per 1000 inhabitants. Conspicuous among the diseases were diarrhoeal diseases (with death rate of 3.5 per 1000 inhabitants), pneumonia (2.6 per 1000), bronchitis (2.5 per 1000), pulmonary tuberculosis (1.0 per 1000), and congestion of the brain (1.0 per 1000). Statistics of deaths from disease depend so much upon classification and correct medical diagnosis, as well as upon local and social influences, that international comparison is not often possible. More interesting are the deaths from accident and suicide. The industrial development of Italy is seen in the great increase in the former—from an annual average of 157 per one million inhabitants in 1865-77 to 340 in 1891. Suicides have also increased from 32 per million inhabitants in 1865-77 to 56.3 in 1891. The analysis of suicides shows the usual facts: 80 per cent were males; the largest number between 20 and 40 years of age; the maximum number in June; the favorite method, drowning among women and firearms among men; most frequent among the military. A curious collection of statistics of duelling (from private sources) closes the report.

Readers who are wholly unacquainted with the theories of primitive property that are associated with the names of Haxthausen, Maurer, Maine, Morgan, Laveleye and Seeböhm will find in *The Evolution of Property*, by Paul Lafargue (Swan Sonnenschein & Co.) a pleasantly written presentation of some of their results as interpreted by a mind of socialistic leanings. A final chapter on *bourgeoise*

(modern) property follows closely the historical chapters of Marx's *Capital*. The volume offers nothing new to the scholar and is too one-sided and radical to be a satisfactory summary for the general reader.

Mr. Walter B. Scaife, in his *Geographical History of America* (Johns Hopkins Studies in Historical and Political Science), gives a condensed *résumé* of existing knowledge concerning the exploration of the eastern and western coasts of the American continents. He also reviews the history of the grants and controversies which have resulted in the establishment of the boundaries of the United States, and of the commonwealths which exist as successors of the original colonies. A chapter, moreover, is devoted to the geographical work carried on by our national government. The most striking and original part of the book is a supplement in which Dr. Scaife makes a careful argument to show that the river called the *Espíritu Santo* by the early explorers and geographers was not the Mississippi, as has been generally supposed, but the Mobile. The author has undoubtedly shown that in many cases, perhaps the majority, the early geographers applied the name in question to rivers other than the Mississippi. But so confused was their knowledge of the region that it would seem impossible to affirm that when they used the name they never had the Mississippi in mind. Several of the older maps have been reproduced as an appendix and add value to the volume.

In the second number of Seminary Papers of the University of Nebraska (Putnam's), Miss Mary Tremain presents an historical sketch of *Slavery in the District of Columbia*. The monograph contains a clear, full and impartial account of the general relation of Congress to the District, the main features of the slavery laws that prevailed there, and the struggle which led to their abolition. It is a good and useful piece of work.

Mr. W. J. Fitzpatrick is a most indefatigable explorer of uncanny nooks and corners in Irish history. The revolutionary episodes at the end of the eighteenth and the early part of the nineteenth century afford admirable opportunities for the exercise of his talent. In *Secret Service Under Pitt* (Longmans, 1892) he shows that he has most successfully availed himself of these opportunities. No Irish conspiracy against English rule has been without its "informer." In some most important instances the identity of the traitor has never been revealed. Mr. Fitzpatrick has taken several cases, notably that of the government's most valuable ally in 1798 and that

of the betrayer of Lord Edward Fitzgerald, and with inexhaustible patience and ingenuity has fixed not only the guilt but the price it brought. His book has the fascination of a romance, while at the same time it throws a hastily light on the political life of the period in Ireland.

Col. G. B. Malleeson's *Refounding of the German Empire* (Scribner's, 1893) contains a superficial account of the political and diplomatic incidents of German history between 1848 and 1871 and a detailed narrative of the wars of the time. It is essentially a military history. The great campaigns of Königrätz, Metz and Sedan are described with much minuteness, though the author's sense of proportion is in some cases defective. He devotes, for example, thirteen pages to Spicheren and only three to Vionville and Mars-la-Tour. It is hard for a reader to follow the tactics of a single battlefield, even down to battalion movements, with maps designed to illustrate only the grand strategy of a whole campaign; yet this is what Col. Malleeson's readers are in several cases obliged to do.

*Government*, by J. N. McArthur (Longmans, 1892), presents a scheme of constitutional and administrative organization which, in the author's opinion, would remedy all the defects of existing governmental systems. He finds the first principles of government best exemplified in "village literary societies, cricket clubs" and such bodies, and his system is based upon what he learns from these. There is something Arcadian in the egotism of the introductory chapter. "Many," says the author, "perhaps most people, consider that great ends can be accomplished only by highly complicated means. I think the reverse. My scheme of government here proposed is simple." And though, as he admits, "I may offend the Radical politician" and "I may possibly startle the Conservative," he proceeds without flinching to unfold his plan. The plan itself is by no means so absurd as the introduction would seem to indicate, and it includes some very suggestive propositions, among which may be noted the immediate responsibility of the professional hierarchic head of any department of the administrative service to the representative body, without the intermediary of an "amateur cabinet member." Mr. McArthur's argument is admirably condensed, but a little judicious editing would have made great improvement in his style.

# POLITICAL SCIENCE QUARTERLY.

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## THE MONETARY CONFERENCE OF 1892.

A COMMITTEE of commerce representing the North German states met in December, 1869, whose report urged upon North Germany a unitary system of money with a gold standard. In the following summer, just before war with France broke out, delegates from those states held at Berlin a convention in aid of the reform. Sore as was the need of this, no beginning could be made while war was on. Hardly, however, had peace come and the empire been set up, when the imperial law of December 4, 1871, ordained the monetary *régime* now in force in Germany, which the law of July 9, 1873, completed. By these acts Germany put away her ridiculous old monetary chaos based on silver and established a system built upon gold.<sup>1</sup>

In 1872, in order to stock up with gold, Germany began to sell her silver, whereupon the gold price of this latter metal commenced that career of decline which has continued ever since, and threatens to go still further. In 1873 Denmark, Sweden and Norway followed Germany's example, entering into a monetary union having a coinage system founded upon gold.<sup>2</sup> Holland went over to gold monometallism by a law of June 6, 1875. The United States began paying gold January 1, 1879, as did Italy early in 1883. By the beginning of 1883, no less than a billion dollars in gold, equal to the product of the

<sup>1</sup> The unit of this is the Mark, containing 5.5311 grains of pure gold, or 6.1457 of standard gold, nine-tenths fine.

<sup>2</sup> As their unit, they adopted the Krone, of such weight (*vis.* 6.226 grains) of fine gold, that a kilogram of this makes 124 twenty-Kronen pieces.

world's gold mines for ten years, had been called for by the countries named.

On December 18, 1873, fearing a disastrous influx of the metal from Germany, Belgium suspended the free coinage of silver, the other states of the Latin Union following on January 31, 1874. Holland, too, this same year, gave up coining silver for private account. On December 21, 1876, Belgium wholly ceased striking standard silver coins. Russia took the same course, also in 1876; France and Switzerland in 1877; Italy a little later.

Nearly at the same time with these changes, demonetizing silver and requiring new gold, the flow of silver to the East decreased, and the yield of the American silver mines increased. Both phenomena tended to depress the value of silver and to lower its price in gold. Early in November, 1872, for the first time since 1852, silver sold in London under sixty pence per ounce. In 1871, silver prices for the year being averaged, 15.58 grains of silver would buy a grain of gold. In 1872 it took 15.63 grains of silver to do this; in 1873, 15.92; in 1874, 16.17; in 1875, 16.58; in 1876, 17.88; in 1878, 17.94; in 1879, 18.40. After 1879 the appreciation of gold in terms of silver was hardly sensible until 1885, when it required 19.41 grains of silver to buy one of gold. For 1889 the figure was 22.09.

This changed value relation between the metals, unheard of before in modern times whatever the relative amounts of their production and consumption, led careful minds to the view that the demonetization of silver must have been the chief cause of the disturbance. In 1878, as a part of the Bland Act, Congress made provision for securing, if possible, an international conference upon the question. This was called, and assembled in Paris, August 10, 1878. Besides those from the United States, delegates were sent by England, Holland, Sweden, Norway, France, Belgium, Switzerland, Italy and Austria-Hungary. Léon Say was president. After seven sessions the conference dissolved on August 29, without "transactional" result. The German Empire did not participate.



The British delegates, while strongly favoring the continuance of silver as full money elsewhere, declared that Great Britain would not give up gold monometallism. The representatives of Sweden, Belgium and Switzerland avowed the same disposition on behalf of their respective governments.

The principal effects of this conference were that public attention was called in an impressive way to the evils which seemed to have sprung from the demonetization of silver, and that Germany presently, in 1879, terminated her sales of silver, which have not been renewed.

In preparing for specie payments in 1878, the United States drew immense sums of gold from Europe, proving the advantage which America has in a fight with Europe for this metal. On account of our tariffs, Europe was unable to send us commodities for the entire volume of our exports, but had to pay for these in great part by gold. The European supply of this metal fell off considerably, and France was the worst sufferer.<sup>1</sup> Accordingly when, in 1881, preparations were making for a second conference, France joined the United States in inviting the other nations. The calls were issued in February. Germany now gave up her attitude of reserve and accepted the invitation. Eighteen states assembled to take part in this conference, which opened at Paris on the 19th of April, 1881. The sessions continued, with a brief recess in May, into the month of July, but the result was nearly as negative as before. Germany and England still declined to change their coinage systems, though delegates of both nations encouraged efforts to continue the monetary character of silver. Germany unreservedly favored its rehabilitation, regarded this as attainable, and was even willing to help it on, partly by postponing and partly by giving up altogether her sales of silver. Notice was given that under certain conditions the Bank of England would

<sup>1</sup> In 1876 France imported 600,000,000 francs in gold; in 1880 but 194,000,000. Meantime its gold export grew from 90,000,000 francs to 413,000,000. In 1876 the vaults of the Bank of France held 1,539,000,000 francs gold, 640,000,000 francs silver; in 1880, 564,000,000 francs gold, 1,222,000,000 francs silver. The monetary woe of Europe was not lightened by Italy's preparations for specie payments, requiring 444,000,000 lire in gold.

considerably enlarge its holdings of silver. While unwilling to coin silver without the great states, Holland strongly voiced the conviction that international bimetallism was the only cure for the world's monetary ills. Italy was prepared, even without Germany and England, to join the rest of the Latin Union and the United States in re-opening mints to silver, if Germany would only abstain from selling silver and withdraw her smaller gold coins, and Great Britain would enlarge the legal-tender competence of her silver crowns.

After thirteen sessions the conference adjourned till April 12, 1882, to give governments an opportunity for reflection and negotiations. It did not re-convene.

After this adjournment no international body bearing an official character met for the study of monetary problems until last year, though a congress of private individuals went into the subject at Paris during the exposition there in 1889. Meantime incessant agitation went on, which, with the continued appreciation of gold, led in the summer of 1887 to the creation of a royal commission in England to investigate the relations of gold and silver. The work of this commission was very thorough. It gathered an enormous amount of testimony and examined a great number of experts, only finishing its labors in October, 1888. Its report embraces, first, a general part, conveying information, and signed by all the members; second, a more explicit portion, containing views of policy with reference to remedy. This latter part includes two sections, one favoring the maintenance of monometallism, the other being a plea for international bimetallism, and these two sections bear an equal number of signatures.

The bimetallists merely recite, though in a very able way, the standard arguments for bimetallism; but the monometallists, Lord Herschell, Sir Charles W. Fremantle, Sir John Lubbock, T. H. Farrer, J. W. Birch and Leonard H. Courtney,<sup>1</sup> make admissions in virtue of which this report marks an epoch in the history of monetary theory. Arguing "as well *a priori* as from the experience of the last half century," they say:

<sup>1</sup> Mr. Courtney has since become an ardent bimetallist.

We think that in any conditions fairly to be contemplated in the future, so far as we can forecast them from the experience of the past, a stable ratio might be maintained if the nations we have alluded to were to accept and strictly adhere to bimetallism, at the suggested ratio. We think that if in all these countries gold and silver could be freely coined, and thus become exchangeable against commodities at the fixed ratio, the market value of silver as measured by gold would conform to that ratio, and not vary to any material extent.

Touching the fear that gold would disappear from a bi-metallic league, they add :

If the arrangement included all the principal commercial nations, we do not think there would be any serious danger of such a result.

These gentlemen had already joined the bimetallist commissioners in the following statement relating to the cause of the decline in silver measured by gold :

Looking to the vast changes which occurred prior to 1873 in the relative production of the two metals without any corresponding disturbance in their market value, it appears difficult to us to resist the conclusion that some influence was then at work tending to steady the price of silver, and to keep the ratio which it bore to gold approximately stable.

These considerations seem to suggest the existence of some steadying influence in former periods, which has now been removed, and which has left the silver market subject to the free influence of causes, the full effect of which was previously kept in check.

Now, undoubtedly, the date which forms the dividing line between an epoch of approximate fixity in the relative value of gold and silver and one of marked instability, is the year when the bimetallic system which had previously been in force in the Latin Union ceased to be in full operation ; and we are irresistibly led to the conclusion that the operation of that system, established as it was in countries the population and commerce of which were considerable, exerted a material influence upon the relative value of the two metals.

So long as that system was in force, we think that, notwithstanding the changes in the production and use of the precious metals, it kept the market price of silver approximately steady at the ratio fixed by law between them, namely,  $15\frac{1}{2}$  to 1.

Many confidently believed that the plentiful purchases of silver by the United States under the Sherman Act of 1890 would raise the gold price of this metal to its old figure. For a time such a result seemed likely, but the hope proved illusory. After a remarkable elevation for a brief period in 1890, the price fell to a lower level than ever, leaving the United States in a precarious financial condition, having upon its hands a large amount of uncoined silver, paid for in paper which the country had avowed the purpose of redeeming in gold on demand.

This new collapse in the gold price of silver caused grave concern in Great Britain as well. Independently of bimetallist agitation, considerations of a momentous character urged upon England all possible effort to prevent further divergence of the two metals. Enormous sums are payable by India to Great Britain in terms of silver rupees, for which, of course, the British recipients realize less and less gold in proportion as silver falls. Moreover, the Indian government has to pay to England each year some £15,000,000 *in terms of gold*. The actual payment is of course made in produce, of which fifty per cent more is required than sufficed twenty-five years ago to liquidate the same amount of indebtedness—a great hardship to India. In addition to this, the lack of a fixed par of exchange between Calcutta and London had turned Great Britain's trade with India into a veritable game of hazard. Driven to it by the difficulty of commerce with England, India had built immense manufactories of its own, exporting their products in vast quantities to China and other silver-using countries. Rightly or wrongly, almost the entire depression of British trade was laid by very many to the dislocation of the old value-relation between the two money-metals.

Meantime a strong movement had been begun in Austria-Hungary for rationalizing the monetary system of that monarchy. Surrounded as it is by gold-using states, it could not do otherwise than choose gold for the basis of its new currency. It accordingly thus elected, and arranged for the purchase of great sums of gold. This, at a time when Russia, too, was

amassing gold, and France and Germany were carefully husbanding their supplies, when Italy was finding it impossible to prevent a premium on gold, and when the Bank of England itself had recently been forced to borrow three million pounds sterling of gold from France, made the monetary outlook gloomy as well for the Old World as for the New. A great many thoughtful men, not in the least inclined to be bimetalists, believed that gold was becoming too scarce to serve as the sole money of ultimate payment, and that consequently it would be of great advantage if a larger monetary use could be made of silver.

It was in the light of the events thus cursorily reviewed that the President of the United States, early in 1892, issued his invitations for a third international conference upon the silver question. Recognizing that some European countries not yet ready to adopt bimetallism might still be willing to confer touching plans more general than that, he couched his circular in such terms that all nations could consistently accept who might think the question of a larger monetary use of silver worthy of discussion at all.

The states of Europe, without a single exception, and also Mexico, accepted the invitation, making with the United States twenty in all, and at the first meeting of the conference every one of the fifty delegates was present. Mr. Beernaert, premier and finance minister of Belgium, opened the proceedings with an address. Mr. Montefiore Levi, a Belgian senator and one of the Belgian delegates in the conference, was chosen president. Mr. Edwin H. Terrell, United States minister at Brussels and a member of the United States delegation, was made vice-president, and Mr. Georges de Laveleye, editor of the *Moniteur des Intérêts Matériels*, general secretary.

As it seemed to be thought that the United States delegates should provide an order of business for the conference, they presented at the second session, November 25th, a statement and program to which the conference adhered in all its subsequent deliberations. After rehearsing the considerations which had led to the convoking of the conference, this paper

offered a resolution that, "in the opinion of this conference, it is desirable that some measures should be found for increasing the use of silver in the currency systems of the nations." The program stated frankly that the United States delegates believed bimetallism, if adopted by a number of nations, to be the best and the only satisfactory plan for the extended monetary use of silver; but expressed the wish that some of the governments, or their delegates, should offer plans short of bimetallism that might be expected to attain the desired end. In addition to any other such plans the United States delegates themselves suggested two, namely, that of Moritz Levy, proposed to the Monetary Conference of 1881, and that of the late distinguished A. Soetbeer, dated at Göttingen, August 5, 1892.

Debate was at once begun upon the initial thesis of the American program, that it is desirable to find some means of increasing the use of silver in the currency systems of the nations—a proposition which merely restated the terms of the invitation under which the conference had convened. The delegates of Germany, Austria-Hungary and Russia hastened to say that they were inhibited by their instructions from debating or voting upon any resolution whatever, while as to this particular resolution Roumania, Portugal, Turkey and Greece, though without special instructions, felt compelled to similar reserve. Great Britain, Spain, Denmark, Mexico and Holland favored the proposition unequivocally. So, in effect, did France and the whole Latin Union, though with a certain hesitancy which led the English delegates to regard these delegations as at this time "disposed to criticism rather than to cordial co-operation with the object of the conference." One is not driven to this view of their conduct. They doubtless meant not to favor any scheme which involved further silver purchases by their states; but their later utterances proved that there was not a delegation of the Latin Union which did not regard a larger use of silver money as a good thing for the world, though two or three individual delegates may have doubted this.

Forssell (Sweden), Raffalovich (Russia) and Boissevain (Holland) deprecating an immediate vote, and the Americans not insisting on this, the resolution was tabled for the day, while, owing to subsequent matters more important than an expression of mere formal opinion, the consideration of it was not renewed. At almost any later date the resolution would have been adopted by a very large *per capita* majority of the conference, including the delegations of all the leading states. It is doubtful, in fact, if a single vote would have been cast against it.

In the course of this second meeting, Mr. Alfred de Rothschild, of the British delegation, presented a proposal looking to the purchase of silver by Europe, which received much attention both in the conference and from the public. The substance of this as first offered was as follows : On condition that the American government should continue its purchases of silver,

the different European powers should combine to make certain purchases, say to the extent of about five million pounds annually, such purchases to be continued over a period of five years, at a price not exceeding forty-three pence per ounce standard; but if silver should rise above that price, purchases for the time being to be immediately suspended.

Mr. Rothschild accompanied this motion with a paper in which, while insisting upon gold monometallism as the sole possible policy for England, he recognized "great grievances both in India and China in connection with the silver question," such that "if anything could be done towards diminishing those grievances, it would be extremely desirable." He raised the question whether it were "not possible to extend the use of silver generally and thereby stop a further fall, the disastrous consequences of which no one can foresee." He could "see no objection to silver being made a legal tender in Great Britain up to five pounds, instead of two pounds, as it is at present." In conclusion Mr. Rothschild declared :

If this conference were to break up without arriving at any definite result, there would be a depreciation in the value of silver which it

would be frightful to contemplate, and out of which a monetary panic would ensue the far-spreading effects of which it would be impossible to foretell.

The Rothschild proposal, with the schemes of Moritz Levy and Soetbeer, was before the conference at the beginning of the third meeting, and as the American delegation had recommended, the discussion of these was declared the next thing in order, spite of Mr. Tirard's idea that bimetallism should be debated first. Much work needed to be done upon the three schemes named before they were fit to be taken up by the full conference. At this meeting, therefore, a special committee was created for the preliminary examination of these and similar suggestions. Messrs. Cannon (United States), Casassus (Mexico), Cramer-Frey (Switzerland), Foville (France), Osma (Spain), Forssell (Sweden), Fremantle (Great Britain), Molesworth (British India), Raffalovich (Russia), Sainctelette (Belgium), Simonelli (Italy), Tietgen (Denmark), van den Berg (Netherlands), and the president and the secretary of the conference, composed this committee.

These gentlemen did much important work, and their two reports are most valuable. They directed their inquiries primarily to four points: (1) the possible restriction of silver production by taxation; (2) the future course of silver production; (3) the intention of the United States as to continuing the purchase of silver; and (4) the future monetary policy of British India. From the evidence adduced the committee saw no hope of limiting the world's silver output by legislative means. No testimony indicated that any deluge of silver was to be feared, the probability seeming to be in the opposite direction, to the effect that the maximum production had been nearly reached, even if not reached or passed already. Regarding the third question, the committee was informed that the United States Silver Purchase Act of 1890 would almost certainly be repealed before very long, its repeal having been urged by both the great political parties. Touching India, Sir Guilford L. Molesworth declared that no change would be made in the monetary system of that country so long



as there was any hope of international bimetallism. The adoption of the gold standard there, he said, would be fraught with sore difficulties, yet might have to be tried as a last resort.

The committee also carefully examined Mr. Rothschild's plan, he having expressed a willingness that before submitting it to the governments the conference should supplement it in any way thought proper. Members of the committee pointed out in it several grave defects. They urged that the silver bought ought certainly to be put to a monetary use. Mr. Cannon was quick to expose the unfairness of expecting the United States to purchase much more heavily than all Europe together and to buy at the market price, whereas Europe was never to pay more than forty-three pence an ounce. The Rothschild program came out of committee somewhat improved, yet still highly objectionable. It read :

1. The European states which might form an agreement on the basis of this proposal would buy each year thirty million ounces of silver, on condition that the United States should agree to continue its present purchases, and that unlimited free coinage be maintained in British India and Mexico.

2. The proportion of the purchase to be made by each country would be determined by agreement.

3. The purchases would be made at the discretion of, and in the manner preferred by, each government.

4. These amounts of silver would be devoted in each country to the monetary uses authorised by its laws ; and the silver would be either coined or made the guarantee for an issue of ordinary or special notes, as each government might think fit.

5. The arrangement would be made for five years. The obligatory purchases of silver would be suspended, should the metal reach, in London, a price determined by agreement between the governments. The purchases could be resumed if the delegates of the different countries interested should agree upon the fixing of a new limit of price. They would be resumed in any case if the price fell below the original limit.

The Soetbeer draft the committee considered very able, but too involved to be the basis of an international agreement. In

accordance, however, with the Moritz Levy idea, they suggested (1) the withdrawal from circulation within a determined period of gold coins containing a weight of less than 5.806 grammes of fine gold (twenty-franc pieces); and (2) the withdrawal of notes of a less value than the coin of twenty francs, an exception being made of notes representing deposits of silver.

Not having been charged to recommend the adoption of any plan, the committee reported back the results of its work, to be passed upon in full conference. A decided majority of the committee favored the Levy recommendations, though not regarding them as of great importance; but the British delegate in the committee, Sir Charles W. Fremantle, said that to carry them out would cause Great Britain considerable inconvenience, and that therefore he and his colleagues could not favor such a course unless it were to be joined with some policy like that of Mr. Rothschild, by which other countries could assist in supporting the gold price of silver.<sup>1</sup> To obviate this objection several members of the committee favored some modification of the Rothschild notion, but the representatives of the Latin Union on the committee, evidently determined that their governments should purchase no more silver, would not agree to this. On the contrary they went so far as to offer a formal motion, that even if such a plan were adopted by the conference, they could not recommend it at home. This

<sup>1</sup> In order exactly to describe what has occurred, this article everywhere speaks of a "fall in the gold price of silver," or "in silver as measured by gold." Silver may, indeed, be said to have "depreciated," *i.e.*, its "*pretium*" has, in gold-using lands, gone down. But "depreciation" is a highly ambiguous term and should not be applied to silver, as nearly all who use or read it when so applied, giving it its more usual signification, take it to mean that silver has lost in *value* or *purchasing power*, which is false. Since 1873 silver has quite remarkably maintained its *value*, but, in common with commodities in general, has become less able, per grain, to *command gold*, that is, it has fallen in gold price. "General fall in gold prices" is of course but another name for "appreciation of gold." Laughable are the efforts of many, witness even Mr. Gladstone in Parliament on the 28th of February last, to show that gold has since 1873 had a more stable value than silver. Gold they measure by itself, and silver they measure by gold, not seeing that to give their statement any meaning, they need a criterion of steadiness different from either metal, *viz.*, the prices of commodities in general.

motion passed the committee by seven votes against six, Forssell (Sweden), Raffalovich (Russia) and Tietgen (Denmark) joining the four representatives of the Latin Union to support it, while all the other members of the committee opposed.

Such were the questions brought before the conference in the first report of this committee. The report formed the subject of debate at the fourth session, and, as was natural, chief attention was devoted to the part of it presenting in its new form the Rothschild scheme. This part of the discussion took an unfortunate turn. Delegates seemed to think that inasmuch as the committee had modified the scheme considerably, no further changes in it could be effected. Consequently, instead of making an effort to remedy still further its defects, which in the judgment of the writer would have been entirely feasible, nearly all who spoke animadverted upon it so severely that Mr. Rothschild felt its fate to be sealed. He, therefore, at the beginning of the fifth session, withdrew it, whereupon discussion began upon the United States proposal of bimetallism.

This discussion was most interesting and was participated in by nearly all the distinguished members of the conference. Foremost in it were Senator Jones, Sir William H. Houldsworth, Sir Guilford L. Molesworth, Boissevain and van den Berg of Holland, Allard and Weber of Belgium, Forssell of Sweden and Tirard of France. What was said threw much light upon the opinions held in various countries on important monetary questions. The matured views of bimetallists were elicited, and a strong attack was made from the monometallist camp to drive their theory to the wall. The chief addresses on the gold side were those of Weber and Forssell. Mr. Weber said nothing new, but presented in a very able manner the line of argument concerning the increase in the world's wealth, the plentifulness of gold in the great banks, the fall of prices as a consequence of cheapened production, and so on, made familiar in this country by the writings of Professor Laughlin and Mr. David A. Wells.

Mr. Forssell went into the subject much more deeply, revealing extraordinary originality and learning. His argument, however, seemed to the writer more cunning than conclusive. His course of thought was meant to show the novelty and untried character of precisely the project advocated as international bimetallism. He insisted that much danger of treachery must inhere in a compact made for such a purpose, — a fact which of course would be fatal. But everything that was of weight in this speaker's argument turned upon his main contention, that however large any international gold and silver basin should be, its gold might either leak out of it or be lost in it. He did not indicate in the least how gold could possibly leave the basin ; but what he said of its conceivable disappearance inside the basin, — as to the possibility, that is, of a serious dearth of gold occurring within the compass of a bimetallic league, — is certainly well worth the attention of bimetallists. The thought was first advanced by Professor Lexis. It is not proposed to canvass it in this place. Suffice it to say that a contingency of the kind, if possible at all, could only arise in case of such an unexpected scarcity of gold as must put gold monometallism absolutely out of the question save for one or two nations at most. Therefore, even supposing Professor Lexis and Mr. Forssell correct in their view, an effort at international bimetallism is more rather than less advisable, though the ratio may need to be 20 or 25 to 1 instead of  $15\frac{1}{2}$  to 1.

The bimetallist arguments were far more numerous and diverse. Only a suggestion of their scope can be given here.

1. Bimetallism was alleged to be in perfect scientific accord with the law of supply and demand, instead of traversing this law, as it is charged by monometallists with doing. It was maintained: You of course cannot fix a value-relation between two wares, say gold and silver, independently of supply and demand as realized between them and between each of them and commodities in general. But between gold and silver, at any rate, a league of strong nations *can fix the relation of supply and demand itself*. Vastly the larger part of all gold and of all silver which has not been made into merchandise exists in the

form of money. Now, of the gold and silver in the form of money the great governments acting together would have a monopoly. Their fiat touching the legal equivalence between given mint-units of the two metals would regulate the actual rates at which those units would exchange with each other. By the well known law of prices when articles are affected by monopoly, the unwrought gold and the unwrought silver not existing as money would follow in value the monetized part.

2. No monometallist in the conference denied that prices have fallen (gold appreciated) since 1873, but several, recognizing the phenomenon, sought to account for it in the usual monometallist manner as the result of copious wealth production. In reply the figures of Jevons, Sauerbeck, Soetbeer and others were cited, which seem to prove that whereas from 1850 to 1870 the world's production of wealth increased on an average 2.75 per cent annually, the average gain between 1870 and 1885 was but 1.6 per cent. It was also set forth that the intrinsic costs of things were falling before 1873 as rapidly as after that date, though in the earlier period prices were rising and extraordinary prosperity prevailed. As still further proof that the fall of prices since 1873 has not proceeded merely from cheapening in intrinsic costs, the conference was reminded that falling costs imply prosperity, high interest and dividends, good wages and profits, few strikes and lock-outs, rapidly multiplying industrial undertakings and rapidly increasing wealth, none of which features fairly characterize the world's economic life since 1873. The vast injustice which the fall of prices causes in the payment of debts and the fulfillment of contracts was dwelt upon somewhat, — less, doubtless, than would have been the case had it been seriously questioned by any.

3. To the proposition that the world's supply of gold is still ample, which had been assumed rather than asserted, several forms of reply were used. The figures and critical estimates of Soetbeer and Leech were adduced, indicating that nearly all the gold now acquired from year to year goes into hoards or manufactures, or is shipped to the East, while population

and business are everywhere increasing. Soetbeer, not a bi-metallist, was further quoted as having demonstrated in his last work that the abundance of gold in banks does not prove an increase in the general stock of monetary gold. It was argued that a general paucity of gold would, by leading to its appreciation, inevitably operate to glut the financial centres, tending to make the holding of money more profitable than investment in productive industry.

4. Several times in the course of the debate attention was drawn to the fact that monometallists no longer urge, as many did fifteen years ago, that silver be demonetized everywhere. This was hailed as a silent recognition of paucity in the yellow metal available for money. Yet Mr. van den Berg, in many respects the ablest monetary authority in the conference, powerfully urged that gold monometallism is tenable only in that primitive form. You cannot, he said, permanently maintain gold monometallism anywhere unless you can do it everywhere. The world of commerce will not brook division into monetary hemispheres. It will not tolerate the chaos of one basal money for the West and another for the East, one for advanced commercial nations and the other for cruder communities, one for the mother land, the other for colonies. In returning to hard money, Austria must choose a gold basis in order to trade with her neighbors. So Roumania. But the motive works elsewhere as well as in Europe. Failing bi-metallism, the merchants of English and Dutch India and of Mexico will clamor for gold as basal money for those lands and will get it if they can. The conflict for gold, if it is not paired with silver, must be not only irrepressible, but more and more bitter without end.

5. It was denied that any over-production of silver has occurred. From 1800 to 1820 silver formed three-fourths of the world's precious metal output, gold one-fourth. From 1850 to 1870 the relation of the two metals was exactly reversed, the output of gold having sprung from an annual average of 55,000 kilos between 1841 and 1850 to one of about 200,000 kilos between 1850 and 1870. Michel Chevalier

and Cobden then fancied the production of gold excessive, and Chevalier wished to demonetize this metal. All now agree that they were in error ; for even after 1850 gold was at no time so abundant that a grain of it would not bring  $15\frac{1}{2}$  grains of silver in France. There were brief periods when it came a trifle short of doing this in London, owing to the state of Paris exchange. In 1892, 197,000 kilos of gold were produced in the world, six times the annual average for the years from 1831 to 1850. The silver yield for 1892 was 4,480,000 kilos, less than six times the annual average between 1831 and 1850. If the world's yield of gold suddenly increased some 300 per cent and maintained the gain for twenty years without any over-production, who can speak of over-production in silver on account of an increase, very gradual, from an annual average of 1,654,000 kilos between 1866 and 1875, to one of 2,930,000 kilos for the last seventeen years, or about seventy-seven per cent ? Notwithstanding demonetization, no large stocks of silver bullion even now exist save that of the United States government, which will in all probability never be put upon the market. The low gold price of the metal is fixed by the comparatively small quantities here and there which do remain unsold.

6. The allegation of certain speakers that bimetallism had strong affinities with protection invited the bimetallists to set forth their view of the relation between these doctrines. It was ascertained that many of the strongest foes of bimetallism are protectionists, and many of its chief advocates free-traders. One speaker affirmed that the refusal of free coinage to silver in so many nations, annihilating all fixity in the par of exchange between the gold-using and the silver-using parts of the world, thus turning commerce between these into a mere game of chance, was doing more to restrict freedom of trade than all the tariffs in existence. The charge that bimetallism is artificial was met partly by the argument traced above, under "1," and partly by showing the necessity that the amount of metallic or fundamental money should increase somewhat in proportion to population and business. In connection with this the nature of credit was considered, the view of Jevons being insisted on,

that credit cannot permanently supplant money, and can be safely expanded only as its hard-money basis expands. It was also remarked that, as a matter of fact, credit has not increased very much since 1873, the amount of cheques cleared at the London clearing house having been the same in 1887 as in 1870, *viz.*, about £6,077,000,000. It was held that if gold is the more suitable money for large transactions, silver certificates share much of its advantage here, while for all smaller dealings, involving immense sums in all, silver is far preferable even in the wealthiest countries. In the light of these facts, the demonetization of the white metal was declared to be "much the most flagrant and disastrous rupture of natural law ever committed by the action of states, not excepting any legislation in the history of mercantilism."

The debate on bimetallism occupied most of sessions six, seven, eight and nine. British delegates had from the outset asseverated that Great Britain would not adopt this system. Germany and Austria-Hungary let it be inferred that they would not do so, at least without England. France explicitly declared this to be her attitude. It would hence have been useless to bring the question of bimetallism to a vote—a thing, in fact, which was at no time intended. Under the circumstances such a vote could have borne no relation to the weight of argument, and would have begotten more or less discord, needlessly hindering future work. And much of this remained. Except in committee, there had been no canvass of the Moritz Levy plan. It was strongly hinted that the Rothschild program was to be revived in a more pleasing form. Besides, the entire second report of the special committee, full of important matters, waited untouched for examination in plenary session.

This report dealt with six different suggestions for the relief of the monetary situation :

1. That of Mr. Tietgen, proposing a union of states for the free coinage of silver at a ratio to gold as near as possible to that of bullion in the market, the coins to be full legal tender and to circulate internationally, each state being bound to redeem its own in gold.



2. That of Sir Wm. H. Houldsworth, based upon a project prepared by Mr. Huskisson in 1826 for the consideration of the British government. This Houldsworth-Huskisson measure, presupposing bimetallism in one, two or three states, is intended to guarantee the success of this by aid of other states, rendered through some means short of bimetallism. These non-bimetallic states receive silver bullion, issuing therefor certificates which name each the gold value of the silver at the date of deposit. The certificates circulate as legal tender in all transactions, and are redeemable each in the weight of silver for which it was issued. If silver has risen, the holder gains ; if it has fallen, he loses.

3. That of Mr. Allard, being an international application of a recommendation made by Secretary Windom in his report for 1889, to issue treasury notes against deposits of silver at its market price when deposited, each payable on demand *at its original value*, in gold, silver coin or silver bullion. Here, the government instead of the certificate holder gains or loses from fluctuations in the gold price of silver.

4. That of Mr. de Foville, advocating international legislation for the recognition and encouragement of silver warrants issued by mints and great banks, these to be commercial rather than monetary in nature, and negotiable without legal-tender quality or guaranty by governments.

5. That of Mr. Forssell, signaling as capable of wider application the form of compact already in vigor between the national banks of Sweden, Denmark and Norway. Each of these banks has an account with each of the others, a cheque being honored by the drawee bank even when the bank drawing it happens to have no cash on deposit with the drawee.

6. That of Messrs. Montefiore Levy and Saintelette, proposing that mints and government banks receive "Siamese twin" deposits, each consisting in a given amount of gold and a given amount, say twenty or twenty-five times as much in weight, of silver, issuing for each such twin deposit a certificate redeemable only in the very weight of gold and silver deposited. The proportion of the silver to the gold in a deposit may, if

necessary, be changed from time to time by an international commission. The certificates form a quasi-money, likely to be very useful in settling international balances.

The report containing these projects and the committee's reflections upon them gave the conference plenty of unfinished business at the end of the ninth meeting. But it was now December 15, when all agreed that the conference must soon adjourn for the holidays. The recess might have ended, say, January 5, but there was a general conviction that a longer interval was desirable, to enable governments to consider the various measures placed before the conference, so as to express more exactly their views and wishes. Therefore, at the tenth meeting, December 17, Baron di Renzis, of Italy, who, after Mr. Tirard's departure to become finance minister to the French government, was the leading delegate of the Latin Union, offered this resolution:

The International Monetary Conference, recognizing the great value of the arguments which have been developed in the reports presented and in the discussions at the meetings, and reserving its final judgment upon the subjects proposed for its examination, expresses its gratitude to the government of the United States for having furnished an opportunity for a fresh study of the present condition of silver.

The Conference suspends its labors and decides, should the governments approve, to meet again the 30th of May, 1893. It expresses the hope that during the interval the careful study of the documents submitted to the conference will have permitted the discovery of an equitable basis for an agreement which shall not infringe in any way the fundamental principles of the monetary policy of the different countries.

The motion was supported in a number of very strong speeches, and passed without a dissentient vote.

In conclusion a few observations are pertinent to the foregoing *résumé*.

1. Judging by the utterances, public and private, of their delegates, the European cabinets must consider the monetary condition of the Western World with considerable concern.

As Sir Rivers Wilson, an uncompromising monometallist, chairman of the British delegation, remarked in the second session:

There can be no question, in our opinion, that all the governments who have sent representatives to this conference, even those who have instructed their delegates to act with the greatest reserve, recognized the presence of a danger; otherwise there would be no justification for our presence here.<sup>1</sup>

2. The old serenity of monometallist faith is much discomposed. The apostasy of theorists like Schaeffle and Wagner and of practical students like Hucks Gibbs, Goschen and now Courtney, has had much effect. More influential still, in this way, have been the growing scarcity of gold relatively to the need of it, the incessant fall of prices, confined to the gold-using world but universal there, and the distress which international commerce suffers from the disappearance of all fixity of par between the gold and the silver nations. If monometallism still has able champions, as it most certainly has, either governments for some reason sent few of them to this conference, or most of those sent preferred silence to speech.

3. Not a particle of doubt is possible that Germany, Austria-Hungary, Russia and France, with the whole Latin Union, and indeed all continental Europe, would resume the free mintage of silver if Great Britain would lead the way. As Baron di Renzis said in the address with which he accompanied his motion that the conference adjourn:

From all sides in this assembly — and the fact is apparent in every speech which has been made, whether the speaker stated it openly or merely alluded to it — eyes are turned toward England. It is perceived and recognized that England has to fill a preponderant rôle upon this question. All the world is waiting to see that great country set the goodly example for which we hope. The speeches of

<sup>1</sup> Most of the great European newspapers, influenced by those who are, or think they are, benefited by the continued appreciation of gold, either misapprehend or misrepresent both the facts of the monetary situation and the views of responsible monetary officials touching these facts.

many delegates have appeared almost like reproductions of an historic phrase. In this struggle for the rehabilitation of silver everybody in fact has seemed to be saying : "*Messieurs les Anglais, tirez les premiers.*"

4. Will the British, thus invoked, "be the first to fire?" Will they fire at all? None can say. What is certain is that they ought to, and that a conviction to this effect is entertained more and more widely in England itself. This was shown by the vote in the Commons last February 28th, on Sir H. Meysey-Thompson's motion that the House express itself in favor of reconvening the Brussels conference. Recent advices assure the writer that this motion would almost certainly have passed had not the government unexpectedly taken the position that its adoption would be regarded as equivalent to a vote of lack of confidence, thus securing against it the suffrages of many who really favored it. As it was, the motion was lost by a majority of only 81 in a House of 381. On April 18, 1890, only three years ago, a similar motion, encountering no adverse effort, was lost by a majority of 96 in a House of only 270.

5. At any rate England will not change to bimetallism at present. What can be done meantime? Is it of any use for the conference to reconvene, particularly as from the attitude of our Congress Europe is permitted to hope that she can in a little while get all our gold?

A twofold reply may be made to this. First, the silver imbroglio being so complicated and so serious, the nations cannot afford to dissolve the conference till every proposition now before it, as well as all new ones having aught of promise, have been fundamentally studied. For lack of time the conference has not yet really sounded a single one of them. Further, two at least of the drafts already submitted are at once so simple and so meritorious that the conference might quite possibly unite upon one of them. Mr. Allard's is in this case. Hazardous as the Windom plan would have been for the United States alone, a syndicate of strong nations could, in the writer's judgment, adopt it with entire safety, and through it, without

loss to any one and with incalculable benefit to humanity, restore silver to its old price and function.

Were this plan rejected, that of Moritz Levy remains, which, modified a little, could hardly fail of being acceptable to all. Let the nations withdraw from circulation every gold coin weighing less than the twenty-franc piece, with every uncovered note worth less than twenty francs, and fill the gap thus opened with new silver, to circulate either as coin or through certificates. Some such proposal has been long before the world and has been endorsed in many quarters. It might conceivably even lead to bimetallism; but should it not, it would still have numerous advantages. France herself could hardly object to it. Its execution — as would be the effect everywhere — would richly replenish her gold centres, bringing into them the bits of gold now scattered among the people and useless in emergency. Thus, while the measure would somewhat raise the silver proportion of the country's total metallic money, upon its central metallic stock — which is a more important consideration — it would have the reverse effect. And the plan would be well worth trying, if France had to be excused from buying silver under it.

E. BENJ. ANDREWS.

## THE THEORY OF PROGRESSIVE TAXATION.

### I.

THE question of progressive taxation is forging to the front. It has not been settled either in theory or in practice. If we look at the history of taxation, we find repeated attempts made to introduce the progressive principle, from the early legislation of Solon down to the present time. And if we confine ourselves to the nineteenth century, we find that almost every country has to some extent introduced the progressive principle into its actual tax system. We find this not only in monarchies, like those of continental Europe, but in democracies, like those of America, Australia and Switzerland. Thus, for instance, we find a progressive income tax in Prussia and many of the other German states, in Sweden, Denmark and many of the towns of Holland and Belgium, as well as in Switzerland; a progressive rental tax in France; a progressive property tax in Switzerland and Australia; a progressive inheritance tax in England, Switzerland, Australia, Canada and elsewhere; and even in the United States, which is supposed to be *par excellence* the home of proportional taxation, we have had a federal progressive property tax and some decidedly progressive income taxes, we still have progressive income taxes and progressive taxes on the receipts of corporations, while the introduction of the progressive principle into the inheritance tax is being earnestly considered. It may be worth while, then, to review the arguments for and against progression in order to ascertain where the real truth lies.

I use the term "progressive taxation" in preference to "graduated taxation," because a gradation may logically be either upwards or downwards; while "progression" always denotes a gradation upwards. A higher rate on a smaller property or income would still be graduated taxation, but it would be regressive, not progressive.

The arguments that have been advanced in favor of progressive taxation may be grouped in three classes, which may be called respectively socialistic, compensatory and economic.<sup>1</sup>

The foremost scientific advocate of the socialistic theory of progression is the German economist Adolf Wagner. Wagner distinguishes between the purely fiscal period in the history of public finance and the "socio-political" period. The characteristic of the first period is the simple endeavor of the government to raise a revenue adequate to its needs. The characteristic of the second period lies in the predominance of social reasons over purely fiscal reasons. The state is no longer satisfied merely with raising adequate revenue, but now considers it a duty to interfere with the rights of private property in order to bring about a more equitable distribution of wealth. The fiscal policy looks merely at the needs of the administration; the socio-political policy looks at the relations of social classes to each other, and the best methods of satisfactorily adjusting these relations. The fiscal policy necessarily results in proportional taxation; the socio-political policy results in progressive taxation. The ethical demands of modern civilization are everywhere preparing the way for a transition from the old fiscal period to the incipient socio-political period. It is these ethical or social reasons alone which can logically serve as a basis for progressive taxation.

This distinction of Wagner is, however, entirely baseless. It is not true historically that the tax policy of various nations has been adjusted solely with reference to purely fiscal reasons. All governments have allowed social considerations in the widest sense to influence their revenue policy. The whole system of protective duties has been framed not merely with reference to revenue considerations, but in order to produce results which should directly affect social and national pros-

<sup>1</sup> For a fuller statement of the theories and for a detailed history and criticism of the various writers on the subject, as well as for a sketch of the facts and results involved, the reader is referred to a monograph on "Progressive Taxation" by the present writer, to appear in Volume VIII of the Publications of the American Economic Association.

perity. Taxes on luxuries have often been mere sumptuary laws, designed as much to check consumption as to yield revenue. Excise taxes have often been levied from a wide social, as well as from a narrow fiscal, standpoint. From the very beginning of all tax systems these social reasons have frequently been present. The attempt to distinguish sharply such periods in history is, therefore, unsuccessful.

But, on the other hand, it is not allowable to confound this undoubtedly social element in all fiscal policy with what Wagner calls the socio-political, or what may be called more correctly the socialistic element. From the principle that the state may modify its strict fiscal policy by considerations of general national utility, to the principle that it is the duty of the state to redress all inequalities of fortune among its private citizens, is a long and dangerous step. It would land us not only in socialism, but practically in communism. If the equalizing of fortunes were one of the acknowledged functions of government, it would be useless to construct any science of finance. There would be only one simple principle: confiscate the property of the rich and give it to the poor.

The socialistic argument, which undoubtedly lies at the basis of many of the demands for progressive taxation, must be unconditionally rejected by all who are not prepared to class themselves as socialists. But, unfortunately, most of the middle class, as well as many professed economists, have confounded the economic theory of progressive taxation with the socialistic theory and have assumed that progressive taxation necessarily implies socialism and confiscation.<sup>1</sup> This is entirely erroneous. It is quite possible to repudiate absolutely the socialistic theory of taxation and yet at the same time to advocate progression. One may be an arch-individualist and yet logically believe in progressive taxation.

Before taking up the economic theory, however, it may be well to notice briefly the views of those who occupy a middle

<sup>1</sup> The ablest American exponent of this subject is Mr. David A. Wells. Cf. "The Communism of a Discriminating Income Tax," *North American Review*, March, 1880.



ground, and who uphold progressive taxation on what I may call the compensatory argument. President Walker, for example, bases his defence of progressive taxation on two points: first, "the undoubted fact that differences of property and income are due in no small degree to the failure of the state in its duty of protecting men against violence and fraud"; and secondly, "that differences in wealth are in a measure due to the acts of the state itself for a political purpose, as treaties of commerce, tariffs, currency legislation, embargoes, non-intercourse acts, wars, *etc.*" He argues that where differences of wealth may fairly be presumed to be in a measure due to the state's own acts of omission and commission, allowance should be made therefor in the tax system.<sup>1</sup> And he concludes that "were the highest human wisdom, with perfect disinterestedness, to frame a scheme of contribution, I must believe that the progressive principle would in some degree be admitted."

This defence of progressive taxation is in many respects interesting,<sup>2</sup> but it is not convincing. The defect of the theory consists in the fact to which President Walker himself alludes, that it furnishes no practical standard and enables us to lay down no general principles by which the influence of the state in creating inequalities of fortune may be measured. If progression is regarded as unequal, then it is impossible to correct one inequality by another unless it can be shown that the second will in every respect fit into, and counterbalance, the first. But the test embodied in the present doctrine is impracticable. If the compensatory argument were the sole defence of progressive taxation, it might be as well to abandon the contention at once.

<sup>1</sup> F. A. Walker, *Political Economy*, first edition (1883), 479-480. In the last edition these passages are omitted, although the general conclusion is still retained.

<sup>2</sup> The theory was advanced at length in the remarkable work of a woman, Mlle. Royer, which received a prize at the great international conference on taxation in Lausanne in 1860 (Royer, *Théorie de l'Impôt*, 1862). And it is found in several other writers, especially among the French. There is every reason to believe, however, that the theory was independently arrived at by General Walker.

Of a similar character, although of somewhat greater force, is the argument which upholds progression in some one particular tax, on the ground of its acting as a counterpoise to the influence of other taxes. When indirect taxes exist they often, it is said, hit the poor harder than the rich. The income tax, with its progressive scale, is to act as an engine of reparation. In order to attain equal treatment the regressive indirect taxes must be counterbalanced by the progressive direct taxes. Proportionality of taxation is still the true ideal, but the departure from proportional taxation in one direction must be met by an equal departure in the opposite direction. This argument I would term the "special compensatory theory," as over against the general compensatory theory. The latter upholds progression as a general principle; the former aims at proportion in general, but is willing to accept progression in some particular tax in order the better to realize the ultimate proportion.

This special compensatory theory is undoubtedly of some force in tending to justify a progressive income or property tax in practice, without upholding general progression in theory. Some of the fiercest opponents of the general theory of progression favor a progressive income or property tax on this ground. So again the progressive rental tax is frequently upheld as being in reality a proportional tax, because of the fact that as house rent decreases, its proportion of the total expenditure or income increases, especially in the middle and lower classes. Such an ultra-conservative as Leroy-Beaulieu advocates progression here, without seeing, however, that the argument is applicable to other taxes as well. But let us pass over these arguments in favor of what may be called ostensible progression and consider the economic arguments that may be advanced for and against progressive taxation as a general theory.

The real contest between the principles of proportion and progression turns about the fundamental question as to the basis of taxation—the theory of benefits or the theory of ability. On the one hand we have the principle that a man

should pay taxes in proportion to the benefits that accrue to him from the state—the so-called give and take, or *quid pro quo* doctrine, also known as the enjoyment, or bargain and sale, or exchange, or reciprocal, or social-dividend theory. Of this, minor variations are the protection and insurance-premium theories. They all in last resort mean taxation according to benefits received. I have therefore summed them up under the name of the theory of benefits. On the other hand we have the principle that a man should pay taxes in accordance with his faculty or ability to pay, or contributive capacity.

We must take it for granted in this place that the theory of benefits as the controlling principle in general taxation has been discarded in favor of the other theory. To prove this in detail and to point out the considerations which limit the general theorem, would require a discussion which belongs rather to the general bases of taxation. The point which I desire to emphasize here is that the theory of benefits has usually led to the principle of proportion, and that the theory of ability or sacrifice has usually led to the principle of progression. But this has not been universally true. For in a few cases the theory of benefits has led to the principle of progression, while the theory of ability has sometimes led not only to the principle of proportion, but also to the principle of degression rather than of progression.<sup>1</sup>

## II.

The old doctrine of taxation was that of benefits. It held that taxes must stand in a definite relation to the advantages derived by the individual citizen. Since protection was generally regarded as the chief function of the state, the conclusion was drawn that taxes must be adjusted to the protection afforded. Taxes were looked upon as premiums of insurance which individuals paid to the collective insurance company—the state—in order to enjoy their possessions in peace and security.

<sup>1</sup> By degressive taxation is meant an increase of the tax rate up to a certain limit, with a constant rate above the limit. That is, the proportional rate is regarded as the norm, but on all sums counted downward below this, the tax rate gradually diminishes. There is a degression.

The natural conclusion from this doctrine was proportionality of taxation. The larger a man's property or income, the greater are the benefits that accrue to him from the protection of the state. An insurance company fixes its premiums in exact proportion to the value of the property ; for the value of the property determines the extent of the risk. So in the same way the state must charge for its activities and exertions, proportioning each charge to the amount of its efforts, and measuring the expenditure of the effort by the exact amount of the property or the income protected. The logical and necessary outcome of this theory was declared to be the proportional taxation of all property or income. This was the theory of Vauban, the Physiocrats, Justi, Adam Smith, McCulloch, Thiers and most of the earlier French, German and English writers.

This conclusion, however, was first modified and then openly attacked. The modification consisted in introducing the theory that the minimum of subsistence should be exempted. As regards the property tax, this took the shape of a demand for the proportional taxation not of all property, but of all property in excess of a definite minimum. As regards the income tax the modification was known as the clear-income theory of taxation. This theory was not much else than the acceptance of the Ricardian view of income. Ricardo says that "the power of paying taxes is in proportion to the net, and not in proportion to the gross, revenue." By net revenue he means gross income, less expenses of production. Now the advocates of the clear-income theory held that the laborer's outlay for necessities are also expenses of production. Hence the demand for the exemption of the minimum of subsistence, as urged by Forbonnais, Steuart, Bentham and others in the eighteenth century. Moreover, some of the German writers, like Behr, Jakob and Lotz, went further and extended the conception of clear income. They maintained that not only the necessary expenses of sheer subsistence, but also the expenses which contribute to maintain a standard of comfort, should be considered expenses of production. The amount of income exempted

would thus be considerably larger. But all the excess, or the clear income over and above these expenses of production, should still be taxed proportionally because of the benefits theory. The taxable income is the clear income. Proportional taxation therefore means proportional taxation of clear income only.

It is plain that this really is proportional taxation in a very peculiar sense ; and that proportional taxation of clear income, *i.e.*, income above a fixed minimum, is really degressive taxation of total income. And thus, without knowing it, many advocates of so-called proportional taxation really favor non-proportional taxation. It may be said, moreover, in criticism, that this idea of clear income is open to serious objection. For as soon as we extend the idea of minimum of existence so as to include a standard of comfort—that is, as soon as we say that not only absolutely necessary but also relatively necessary expenses should be deducted, clear income, or taxable income, becomes a variable quantity, because not a fixed but a variable minimum must be deducted in each case. And since wealthier individuals generally have a higher standard of life,—for they consider almost as necessities what the poor look on as luxuries,—it would follow that the wealthier a man is, up to a certain point, the greater should be the amount exempted from taxation. Proportional taxation of clear income might in this case be not degressive but regressive taxation of total income ; it might actually tax the poor man more than the rich man. Clearly, therefore, if the idea of clear income be accepted at all, it must be restricted to the surplus above a fixed minimum of necessary subsistence.

Not only was the doctrine of proportional taxation modified in this way, but it was soon formally attacked, and from two sides. On the one hand the inadequacy of the basis was pointed out : it was affirmed that taxes could not and should not be proportioned to benefits. On the other hand, while the basis was still upheld, the validity of the conclusion was denied. That is, it was still asserted that taxes must be paid in accordance with benefits ; but it was shown that benefits

were not proportional to property or income. Let us take up the last objection first, especially because it has been almost completely overlooked.

The benefits to the individual, said some writers, like Condorcet, Garnier, Eisenhart and Judeich, increase faster than his property or income. Most of the public expenses are incurred to protect the rich against the poor, and therefore the rich ought to contribute not only absolutely but relatively more. Certain governmental expenses, said other writers, confer an equal or proportional benefit on all ; but there are many kinds of governmental outlay which have a special value for the rich, without losing the equal value for all. Others again confessed that the benefits of state actions are theoretically enjoyed by all, but maintained that practically the benefits accrue only to the wealthier classes. Finally, some writers, *e.g.* Fauveau, went so far as to invoke the aid of mathematics, and to try to prove that protection actually increases faster than property or income. The value of state protection to a man worth one million dollars is not just ten times as much as its value to the man worth one hundred thousand dollars, but far more than ten times as much. The insurance argument, say these writers, proves the contrary of what it is intended to prove. For insurance companies fix their premiums not only in proportion to the amount insured, but also according to the risks, so that the same amounts often pay different premiums. Now a million dollars belonging to one man is in greater risk of being stolen or pillaged than the same amount distributed among several men. Therefore the tax rate or insurance premium ought to be higher. Thus from all these different points of view writers who firmly believe in the benefits theory are forced, logically, as they think, to demand progressive taxation.

The situation is a curious one. The benefits theory is usually regarded by its opponents as a narrow, extreme-individualist, almost atomistic doctrine. The demand for progressive taxation is usually branded by the individualists as a socialistic demand. Yet here we have the arch-individualists who demand

what other individualists regard as arch-socialism. It is a remarkable outcome of individualism.

In reality, however, this defence of progressive taxation is not very strong. Far from being the fact that the value of protection increases faster than property, the very reverse is true. A man without any income or property at all may have more money spent on him in the poor-house than hundreds of men with moderate incomes. The millionaire who is able to hire his own watchmen, his own detectives, his own military guard, and who often relies more on his individual efforts than on the government for the protection of his property, causes the state less expense than the man of smaller means who must depend entirely on the government. The rich man sends his children to private schools and colleges; the poor man has his family educated in the public schools. The rich man has his street swept by his own hired laborer; the poor man has his cleaned at the expense of the city. The activity of the state is up to a certain point subject to the law of increasing returns. If we are to have any comparisons at all between state action and private business, the state may be compared to a railroad, whose business and whose receipts may increase vastly without entailing a proportionate increase of outlay, because certain expenses are fixed, not variable, charges. It does not cost the state ten times as much to settle a \$1,000 lawsuit as it does to settle a \$100 litigation. Certain expenses of government indeed vary with the value of property, but the great majority increase in a less than proportionate ratio. And from the standpoint of benefits conferred, who would have the hardihood to say that the poor man does not value the protection afforded to his life and property just as much as the rich man? As we have just seen, he frequently values it far more, because of his entire dependence on the state. No; if protection or benefits is to be the sole test of taxation, the scale should be graduated downward, not upward; neither the protection nor the benefits grow in proportion to the property or income. Logically, thus, it might seem that the poor man should then pay proportionally more than the rich man.

This whole method of argument, however, is inconclusive. The question of advantages which an individual derives from governmental action is a psychological one. It does not logically lead either to proportional or to progressive or to regressive taxation. The degree to which a taxpayer values the public art galleries, or the public concerts, or clean streets, or the decisions of the courts, or the thousand and one other benefits conferred by state action, depends on a multiplicity of motives which may differ in every individual case. A poor man may value them more, or he may value them less, than a rich man. Two equally rich men may value them in entirely different degrees. There is no exact and absolute measure of advantages. It is wholly impossible to apportion to any individual his exact particular share in the benefits of governmental activity. The advantages are quantitatively not measurable.<sup>1</sup> Proportional taxation as a necessary outcome of the benefits theory is just as illogical as progressive taxation based on the same theory.

It is this logical conclusion which has led most recent writers to abandon the premises that made the conclusion possible. But some of the advocates of the give-and-take theory sought to uphold the general doctrine on slightly different grounds. It was confessed that the protection or insurance theory of taxation was illogical. But the advocates of the give-and-take theory, like Sargent and Gandillot, now maintained that taxes should be proportioned to the cost of service. Not the value of the protection to the individual, but the cost of the service to the government is the test. Every man must pay the state for a service just what it costs the state to afford that service. This is still the exchange or *quid pro quo* theory, but it is a variation from the untenable protection or insurance doctrine.

But the cost-of-service theory was soon found to be just as unsatisfactory as the other variations of the give-and-take

<sup>1</sup> Cf. the discussion of benefits as both the reason and the measure of taxation, in my address on the single tax, in *The Single Tax Discussion*, reported for the American Social Science Association (1890), pp. 40-44.



theory. There is, indeed, no doubt that some payments made by individuals for particular services should represent as nearly as possible the cost of service to the government. In this all modern writers are agreed. But such payments are not taxes. They are known in public finance as fees and tolls, or what Adam Smith called "particular contributions." But they are not taxes properly so called. For just as it is impossible to apportion taxes in general according to the protection or insurance, because it is impracticable to measure the individual benefits of general government activity, so in the same way it is impossible to apportion taxes in general according to the cost of each particular service, because it is impracticable to separate the individual's share in the total cost of general state expenses. The cost-of-service theory is just as inadequate as the protection or insurance theory. They are both variations of an indefensible whole.

Thus the entire give-and-take theory came to be abandoned as the foundation of a scientific treatment of taxation. And since the theory of benefits was largely discarded as the sole explanation of taxation, it became necessary to substitute another basis. This has been found in the doctrine of ability or faculty. Every individual should be taxed in accordance with his faculty, or his ability to pay.

### III.

The faculty theory of taxation is very old. That a man should contribute to the public burdens in proportion to his ability, or faculty, is a principle that dates back to the middle ages, both in theoretical literature and in practical legislation, and may even be found in its main outlines in the writings of the Greek philosophers. The word "faculty" is the usual one in Latin and French tax laws and is the general term employed in all the early American laws, so it seems to be a peculiarly appropriate term to use in American discussions. For a long time, however, the best practical test of faculty was supposed to be general property. Thus all through the

middle ages, when local taxes were levied at all, they were assessed on general property on the principle *juxta bonorum facultatem* or *pro bonorum facultate*.<sup>1</sup> In England the word ability is first used in a general statute in the Elizabethan Poor Law, which provides for the taxation of every inhabitant of the parish "according to the ability of the parish"—a term interpreted to mean "property." This identification of ability and faculty with property was carried over into the earliest American colonial legislation.<sup>2</sup>

Later on the interpretation of "faculty" was somewhat altered. From meaning property it now began to denote revenue or income. But it was still interpreted to imply a proportional tax,—proportional, now, no longer to property, but to income. We see this idea carried out in practical legislation. Thus, not to speak of the mediaeval town taxes in Europe, we find in the tax laws of the American colonies toward the middle of the eighteenth century the word "faculty" used to designate the "returns and gains," as over against the "visible estates" or property; and the tax was expressly called the "faculty tax" or the "assessment on the faculty."<sup>3</sup> So again during the French Revolution the principle was repeatedly laid down that taxation should be according to faculty, or according to estates and faculties,—faculty being presumed to stand for revenue as over against the property. But in all cases, with only one exception, the faculty tax was held to mean a proportional, not a progressive tax. And later on, in the French constitutions of 1814 and 1830, the term "faculty tax" seems to be used in the sense of a proportional tax on property.

The idea that faculty or ability is measured by income obtained a firm foothold in theory through the celebrated maxim of Adam Smith, that "the subjects of every state ought to contribute . . . as nearly as possible in proportion to their respective abilities, that is, in proportion to the revenue which

<sup>1</sup> See my article, "The General Property Tax," in the *POLITICAL SCIENCE QUARTERLY*, V, 48 (March, 1890).

<sup>2</sup> *Ibid.*, p. 57.

<sup>3</sup> *Ibid.*, p. 58.

they respectively enjoy," *etc.* And for some time the theorists regarded the proportional income tax as the ideal, which ought to be substituted for the whole existing system of taxation.

It was not long, however, before a slightly different interpretation was put on faculty. Income was still regarded as the test of faculty, but the definition of income was altered, or rather, only a portion, not the whole, of the income was henceforth regarded as the standard of ability. Only that part of income which exceeded what was necessary for existence was declared taxable. The idea we know had already been developed by the advocates of the give-and-take theory of taxation, like Steuart, Bentham, Forbonnais, and a whole host of German writers in the first half of this century. But the clear-income theory, as it is called, was adopted also by the advocates of the faculty principle. That is to say, taxation as demanded by the faculty principle should be proportional indeed, but proportional only to that part of income which exceeded a definite sum. The minimum of existence should be exempted. It is readily seen that the resulting tax would be not strictly proportional, but graduated, as to the whole income, although it would be proportional to a certain excess of income.

The entering wedge, which thus began to modify the conception of faculty, was soon pushed further in. The original idea, as we have seen, was that of production. Whether the product was taken as it came in, in the shape of income, or as it permanently remained, in the shape of property, is immaterial in so far as this point is concerned. Both property and income as tests of faculty had regard to conditions of production. But as soon as a demand was made for the exemption of the minimum of subsistence, a new factor was introduced, namely, the conditions of consumption. What the individual received or produced in the way of income was no longer the only consideration ; the ability to apply this product to the satisfaction of his necessary wants became an equally cogent factor. Then it was only a step to enlarge the conception of consumption. Not alone the satisfaction of necessary wants, but

the satisfaction of all wants now became the watchword. Faculty was declared to consist not alone in power of production or extent of product, but also in the power to use the product to satisfy all one's wants. The conditions which limit faculty are to be found not only in the amount of the income but in the demands that are made upon the individual in disposing of his income. In other words, the idea of burden, or sacrifice, was introduced. Equality of pressure or equality of sacrifice now became a fundamental consideration; and faculty or capacity to pay taxes was henceforth declared to be measured by that proportion of his product or income the loss of which would impose upon the individual an equal burden or sacrifice with his neighbor. This was virtually the standpoint of Montesquieu, Montyon and Say among the French, and of Craig, Buchanan and Sayer among the English writers.

The doctrine of faculty, as reinvigorated by the conception of sacrifice, was thus made the starting point of a new scientific movement. Some writers, like the German Rau, declared the two ideas virtually identical. Some, like John Stuart Mill, let fall entirely the conception of faculty and maintained that the only test of just taxation was equality of sacrifice. Finally other more modern authors have sought to combine the two ideas, maintaining that the conception of faculty can be really grasped only when interpreted in the light of equal sacrifice, or conditioned by it.

What, now, were the conclusions drawn from this doctrine of equal sacrifice—a doctrine which is by no means so new as has been generally assumed, and which is found in many of the English and French writers who have almost universally been passed over in the history of the science of finance? The argument may be expressed as follows. All individual wants vary in intensity, from the absolutely necessary wants of mere subsistence to the less pressing wants which can be satisfied by sheer luxuries. Taxes, in so far as they rob us of the means of satisfying our wants, impose a sacrifice on us. But the sacrifice involved in giving up a portion of what enables us to satisfy our necessary wants, is very different from the sacrifice involved

in giving up a portion of what enables us to satisfy our less urgent wants. If two men have incomes of one thousand dollars and one hundred thousand dollars respectively, we impose upon them not equal, but very unequal sacrifices, if we take away the same proportion, say ten per cent, from each: for the one now has only nine hundred dollars, and must deprive himself and his family of necessities of life; the other has ninety thousand dollars, and if he retrenches at all his expenditures, which is very doubtful, he will give up only great luxuries, which do not satisfy any pressing want. The sacrifice imposed upon the two individuals is not equal. We are imposing on the poorer man a far heavier sacrifice than on the richer. In order to impose equal sacrifices we must tax the latter not only absolutely but relatively more than the former. That is, the tax must not be proportional, but progressive; the rate must be lower in one case than in the other. And since our wants shade imperceptibly into each other, — from absolute necessities, to comforts, to comparative luxuries, to extreme luxuries, — logic would require the progression to be gradual.

This doctrine was soon assailed from several sides. Some, like Leroy-Beaulieu, opposed it simply because they denied the validity of the sacrifice theory as over against the benefits theory. But they may be passed over here, as they have already been discussed under the head of advocates of the benefits theory. Others, like Mill, asserted that the doctrine was "too disputable entirely," without clearly showing, however, in what way it could be disputed. For they still believed in the equality-of-sacrifice doctrine, although they did not desire to go beyond the exemption of the minimum of existence. Others again, among recent writers, have accepted the conclusion as to progressive taxation, but maintain that the premises should be slightly altered. Others, finally, have pointed out that the conclusion itself should be somewhat changed.

To take the last point first. If we accept the argument, so it was said, it follows that the rate of progression should continually increase until finally the whole income or property would be swallowed up by the tax. This is a most common

objection and one of the favorite arguments with opponents of progressive taxation. It may be traced as far back as the last century. Jollivet, for example called the progressive tax the vulture which consumes its own entrails.<sup>1</sup> In answer to this it was pointed out by Neumann and others that the progressive rate would satisfy the demands of theory by applying only to the successive increments of property or income, so that the hundred per cent rate, if it were ever reached, would never apply to the entire income, and therefore could never confiscate the whole income. But more than this, many of the advocates of progressive taxation hold that the rate of progression ought itself to be degressive. This was deemed to follow logically from the argument above. For if the intensity of our wants differs very considerably with different objects, the loss of a given sum of money will affect the poor man and the rich man very unequally, because in the one case it trenches upon necessities, in the other case it does not. But in proportion as we approach the less necessary wants, the difference in intensity diminishes, until finally, when we deal with large deductions from large incomes, there is virtually no difference in the intensity of the wants, because the amounts serve to satisfy wants for extreme luxuries, the loss of which will be of equally little importance. Therefore the rate of taxation should gradually increase up to a certain point, then decrease with the difference in the intensity of the wants, until finally, when the point is reached beyond which the wants are of equally little importance, the rate should be the same. In other words taxation should be progressive, but the rate of progression should itself gradually decrease. Equality of sacrifice therefore leads to degressively progressive taxation.

We come, now, to those writers who accept the conclusion, but desire a change in the premises. For instance, some, like the recent Austrian economist, Meyer, while approving progressive taxation, think that the premises prove a little too much. If the doctrine of equal sacrifice is to be inter-

<sup>1</sup> "L'impôt progressif, en dernière analyse, c'est le vautour déchirant ses propres entrailles." J. B. M. Jollivet, *De l'Impôt Progressif, et du Morcellement des Patrimoines* (1793), p. 96.

preted as meaning that the intensity of the wants which remain unsatisfied because of the tax must be equal, then the tax would have to take from the large income the whole difference between it and the smaller income, as only thus could equality of sacrifice in the sense indicated be attained. But this, it is held, would be rank communism. These writers therefore propose to measure the equality of the sacrifice in a different way,—not by the intensity of the wants that remain unsatisfied because of the tax, but by the degree in which the tax increases the intensity of the last wants that are actually satisfied. The stress is laid upon the satisfied, not the unsatisfied wants.

This objection, however, is of very little weight, because it ascribes an arbitrary meaning to the word “equal.” When economists speak of equal sacrifice, they mean relatively proportional sacrifice. When we speak of equality of taxation, we certainly do not mean that identically the same amount should be taken from each one; for that would involve the grossest inequality. Where we say that taxes should be equal, we mean that the burden should be proportional. Whether the proportion should be a strict numerical or a relative proportion,—that is, whether the rate should be the same or different,—depends on the answer we give to certain fundamental questions. It is perfectly conceivable, for instance, that a truer proportion might be found through a so-called progressive tax, than through what is commonly called a proportional tax. That was the view of Robespierre and of the French Convention when it decreed progressive taxation in the following words :

In order to attain a more exact proportion in the division of public burdens which every citizen should support according to his faculties, a graduated and progressive tax shall be established on luxury and property, real as well as personal.<sup>1</sup>

So in the same way, when we say that the sacrifice should be equal, we mean with John Stuart Mill that “each person shall

<sup>1</sup> Loi du 18 Mars, 1793. In Hélié, *Les Constitutions de la France* (1880), p. 359.

feel neither more nor less inconvenience from his share of the payment than every other person experiences from his." "Equal" sacrifice is thus merely a rough way of expressing the idea of "proportional" sacrifice. In assuming that equal sacrifice necessarily implies that "the intensity of the wants that remain unsatisfied because of the tax" must be equal, these objectors really confound equal sacrifice with arithmetical equality. All that is implied in the doctrine of equal sacrifice is that the pressure must be relatively proportional, not that it must be identically the same. It is the same mistake as to assume that equality of taxation means that every one—rich and poor—should pay precisely the same amount. The amount paid is identical or equal in one sense, and yet such taxation would be grossly unequal in the usual sense of the term "equal taxation." Equality as used of taxation does not mean sameness, but proportionality.

It makes no difference, therefore, whether we lay the stress on the satisfied or on the unsatisfied wants. The explanation is identical in either case. Granting the gradation in human wants, a tax which takes away the possibility of satisfying some wants, changes the intensity of the last want actually satisfied, just as it in the same way changes the intensity of the next urgent want that remains unsatisfied. We are simply looking at the same fact from two different standpoints. The theory is not altered a whit. If the imposition of a tax makes me abandon my outlay for amusements, in order to be able to purchase clothing, the intensity of my last want actually satisfied is increased (because the desire for clothing is more pressing than that for amusements), but the intensity of my next urgent want that remains unsatisfied is equally increased (because I now can not afford amusements, while formerly I could afford amusements but could perhaps not afford more expensive enjoyments).

This then is the theory of progressive taxation resting on equality of sacrifice. A number of recent Dutch writers, who had already in the seventies accepted the final utility theory of Jevons, applied this theory to the doctrine of progressive



taxation just discussed. According to that more modern nomenclature the theory might be put as follows :

Every satisfaction of human wants implies the existence of utility in the commodity which provides this satisfaction. The value of all commodities depends upon their final utility, *i. e.*, upon the serviceableness of the last usable portion to satisfy some particular wants. Since the intensity of our wants and therefore their final utility decreases as we ascend from the lower or more pressing to the higher or less urgent wants, and since larger incomes supply the means of satisfying these less intense wants, a strictly proportional tax would involve smaller sacrifices in the case of the larger incomes. Strict equality of sacrifice in the sense of relatively proportional diminution of burden thus involves progressive taxation. But it is a well established fact that the number of wants increases as their intensity diminishes. The urgent wants of existence are very pressing indeed, but limited in number ; the less urgent wants continually increase in number and variety with wealth and civilization. After a certain point, therefore, the differences between the intensity (and final utility) of wants diminishes with the increase of their number and area, until finally, when we come to the very large incomes, the possibility of satisfying almost all wants becomes equal. Hence while taxation should be progressive, the rate of progression should itself diminish until finally the tax becomes proportional.

The necessity of progressive taxation resting on this gradual decrease of final utility of wants was worked out arithmetically by some of the Dutch authors in a series of complicated tables, which I pass over in this place. The proof, however, seemed to be absolutely complete. The logical necessity of progressive taxation, as an outcome of the equal sacrifice theory or the final utility theory, seemed to be put on absolutely secure mathematical foundations. But it was reserved for another Dutch writer to use the same mathematical arguments in the overthrow of these conclusions. In a very recent work, which there is no space to discuss here, Cohen Stuart ingeniously demonstrates that the whole elaborate system of

computation is erroneous, and that progressive taxation is not a logically necessary conclusion from the assumed premises. According as we choose our figures we can prove the possibility of progressive, of proportional or of regressive taxation. From the equality-of-sacrifice doctrine of itself, we cannot deduce any mathematically exact scale of taxation, whether progressive or otherwise.

This brings us to the very core of the objection to the equal sacrifice theory, regarded as determining the paramount consideration in the construction of any definite rate of progression. The imposition of equal sacrifices on all taxpayers must always remain an ideal impossible of actual realization. Sacrifice denotes something psychical, something psychological. A tax takes away commodities, which are material, tangible. To ascertain the exact relations between something psychical and something material, is impossible. No calculus of pains and pleasures can suffice; no attempt to reduce the heterogeneous to the homogeneous can ever succeed. But even assuming that this could be done, the case for the advocates of equal sacrifice would not be much better. The sacrifice occasioned by a tax is only one factor in the problem, and may be a minor factor. Two men may have the same income, which they may value at very different rates. The one may be a bachelor, the other a man with a large family dependent on him; the one may be well, the other ill; the one may have simple tastes, the other extravagant tastes; the one may be a miser, the other a spendthrift; the one may earn his income, the other may receive it as a gift; the one may spend his income in a village where prices are low, the other may be compelled to spend it in a metropolis where prices are high. The variations in particular cases are numberless. It is utterly impossible to say whether the identical tax on people of identical income or property will produce the same relative pressure, *i.e.*, occasion an equal (proportional) sacrifice. And since sacrifice bears no definite relation to amount of commodities, it is quite conceivable that in individual cases a regressive tax may produce just as much or

as little equality of sacrifice as a proportional or a progressive tax. The attempt to ascertain a mathematical scale of progression, so as to avoid a charge of arbitrariness, is foredoomed to failure. The equality-of-sacrifice theory, taken by itself, cannot lead to any fixed rate of taxation, whether proportional or graduated.

A supposed way out of the difficulty has recently been outlined. One of the leaders of the Austrian school of pure economics, Professor Sax, has boldly maintained that taxation has nothing at all to do with equal sacrifice, and that progressive taxation may be upheld on what he calls purely economic grounds, apart from questions of justice or ethics. This theory is deemed by its author so important and conclusive that it deserves a slightly fuller discussion.<sup>1</sup>

Sax bases his diffusely expressed, but acutely reasoned, exposition on the assertion that the problems of taxation have nothing to do with ethical, but only with purely economic considerations; and that therefore the ideas of justice and of equal sacrifice are entirely irrelevant. He classifies all human wants as individual and collectivistic. Every person has wants that attach to him simply as an individual; but he also has wants that arise from association with other men. It is with these collectivistic or social wants that the science of finance has to deal. The state is not the only form of organization which satisfies these collectivistic wants; for these may be satisfied in part by other forms of association. But the state alone can satisfy a large part of the collectivistic wants; and in order to make it possible for the state to satisfy these wants, the individual must support the state. This is the basis of taxation.

The problem of taxation is: How much of a man's stock of goods shall he devote to these collectivistic wants? This must depend, says Sax, on the final utility of the goods taken from the individual. That is to say, our wants vary in intensity, ranging from the most pressing — those of absolute neces-

<sup>1</sup> It will be found in his *Grundlegung der Theoretischen Staatswirtschaft*, (1887), esp. §§ 81, 82; and is repeated in his essay "Die Progressivsteuer," in the first number of the Austrian *Zeitschrift für Volkswirtschaft, Socialpolitik und Verwaltung*, 1892.

saries of life—through several grades until we reach pure luxuries. The higher we go in the stock of goods at our disposal, the greater, up to a certain point, the decrease in the intensity of our wants. The value of any particular quantity of goods is therefore fixed by its final utility, that is, by the serviceableness of the last usable portion to satisfy some particular wants. Now the problem of equal taxation is, to take away from individuals such quantities of goods that each individual will value the amount taken from him just as highly as his neighbor will value the amount taken from him. In other words, the final utility of the commodities taken must be the same in every case. This he calls the economic principle of equivalence. But as we have seen that the final utility varies inversely as the amount, the final utility of the commodities taken from two unequally wealthy individuals can be equal only when we take, not relatively the same, but a relatively larger proportion from the wealthier individual. If we took the same proportion from two unequal stocks of goods, A and B, the final utility of the amount taken from the smaller stock A would be far greater than the final utility taken from the larger stock B. In order to make the final utility equal we must take a larger proportion from B than from A. In other words we must have progressive taxation up to a certain point. "Equality of values taken," not "equality of sacrifice," is the purely economic basis of taxation.<sup>1</sup>

<sup>1</sup> Professor James, in his review of Sax's book in the *POLITICAL SCIENCE QUARTERLY*, V, 168 (March, 1890), gives an unintentionally erroneous account of Sax's meaning. James says: "The state may, therefore, for a given service take very different sums from different private economies, because the final utility of the service varies with the amount of goods." Sax does not mean this. If individuals were to pay taxes in accordance with the final utility of the service, we would practically be going back to the give-and-take theory of taxation, which Sax expressly disclaims. It is not the final utility of the state service, but the final utility of the commodities taken away in the shape of taxes, which Sax emphasizes. The final utility, or value, of the state services has nothing to do with the question. It is the final utilities of the commodities that the individual pays to the state which must be equal, and it is because the final utility of these varies inversely as the whole stock of goods that Sax demands progressive taxation. We must be careful not to confuse the two notions, as does Professor James. Sax himself protests against a similar confusion of which an Austrian economist is guilty. Cf. *Die Progressivsteuer*, 91, note.

Although Sax heralds this as a great discovery, we may be pardoned for believing that it contains absolutely nothing new that is of any value for the purposes of the theory of progressive taxation. In the first place the doctrine of the gradation of wants had long since been elaborated by the Austrian economists; the final utility theory of Jevons had been applied to the problems of taxation by the Dutch economists; and lastly, the formulation of the whole doctrine had been developed by Meyer without any suspicion on his own part that he had thereby made any specially new discovery. Now the only difference between the equal sacrifice or final utility theory of his predecessors and the "equivalence" theory of Sax is a mere difference of words. The equal sacrifice theory says that the tax must take away such amounts that the resulting pressure or the sacrifice of enjoyments may be relatively proportional; the "equivalence" theory says that taxation must take away relatively proportional amounts. But the taking away or giving up of anything involves a pressure or a sacrifice, whether the sacrifice be voluntary or compulsory. Hence "equality of values taken" implies an "equality of sacrifice" to the individual.

In fact a "purely economic" theory of taxation is as impossible as a "purely economic" theory of value, if "pure economics" must make abstraction of psychological and therefore of ethical considerations. As soon as we introduce the conception of human wants and the means of satisfying these wants, we are dealing with questions of sacrifice of enjoyments. Equality of taxation therefore connotes an ethical problem, in the same sense that the general law of value and price connotes an ethical problem. The mediaeval theory of *justum pretium*, with its modern successors in the theories of fair wages, of reasonable railway and other corporation charges, shows how indissolubly are bound up the problems of ethics and economics. The problems of taxation are of no different kind. And the situation is not altered a whit by regarding taxes as the satisfaction of collectivistic wants. If I have to spend money to support my relatives, it is no less a sacrifice because these

duties may be regarded as the satisfaction of individualistic wants, *i.e.* wants which primarily affect me in the individual relations of my family. All the more must the compulsory subtraction from my wealth by a tax be declared a sacrifice, even though it be regarded as the voluntary satisfaction of collectivistic wants. Hence whether we call it the purely economic theory or the ethical theory of public finance, is immaterial. The "equivalence" theory of taxation is simply another way of putting the final utility or equal sacrifice theory. They do not oppose each other, they do not even supplement each other; correctly understood they are simply two explanations of the same thing in slightly different words. It is impossible to take away relatively proportional values without inflicting relatively proportional sacrifices.

So far has the modern theory of progressive taxation gone. But if, as we have seen, the equality-of-sacrifice theory taken by itself cannot lead to any fixed rate of progression, must we then range ourselves with those who maintain that progressive taxation is illogical and unjust, and that there are no substantial arguments in its favor, while the opposing arguments are numerous and convincing? Is progressive taxation economically justifiable or not? Is it theoretically sound and practically expedient?

#### IV.

And first, must we abandon progressive taxation in theory? It seems to me not, and for the following reasons.

We must revert to the fundamental conception of faculty or ability, which is after all the best standard we have of the measure of general obligation to pay taxes. What does the faculty theory in its wisest interpretation teach us in the matter?

President Walker's definition of faculty is well known.<sup>1</sup> Faculty, he says, is "the native or acquired power of production." But if we analyze faculty more closely, in the sense

<sup>1</sup> Cf. his article, "The Bases of Taxation," in the *POLITICAL SCIENCE QUARTERLY*, III, 14 (March, 1888).

in which we instinctively use the word in tax matters, we see that it means something more than that. It not only implies native or acquired power of production, but includes also at least the opportunity of putting these powers to use, the manner in which the powers are actually employed and the results of their use as measured by periodical or permanent accretion to the producer's possessions. We have seen how the original idea was that represented by President Walker, but how this was soon supplanted by the more real and practicable tests, first of property (or permanent accretion), then of income (or periodical accretion). But, furthermore, faculty connotes an additional conception. It means not only powers of production or results of powers of production, but also the capacity to make use of these powers or these results—the capacity, in other words, for enjoying the results of the exertions. It is this latter conception which has been developed by recent writers, although they have carried it to an extreme just as excessive as that represented by the advocates of the earlier theories. The elements of faculty, then, are two-fold, (1) those connected with acquisition or production, (2) those connected with outlay or consumption. What is the application to the matter in hand?

If we regard only the first set of elements, it is evident that the possession of large fortunes or large incomes in itself affords the possessor a decided advantage in augmenting his possessions. The facility of increasing production often grows in more than arithmetical proportion. A rich man may be said to be subject in some sense to the law of increasing returns. The more he has, the easier it is for him to acquire still more. The initial disadvantages have been overcome. This was early pointed out by Adam Smith when he said:

A great stock, though with small profits, generally increases faster than a small stock with great profits. Money, says the proverb, makes money. When you have got a little, it is often easy to get more. The great difficulty is to get that little.

When the native power of production remains as before, the "acquired power" has greatly augmented. Hence from this

point of view faculty may be said to increase faster than fortune or income. And this element of taxable capacity would not illogically result in a more than proportional rate of taxation.

On the other hand, the elements of faculty which are connected with outlay or consumption bring us right back again to the sacrifice theory. While the idea of faculty includes that of sacrifice, the two ideas are not coextensive. Faculty is the larger, sacrifice the smaller conception. Faculty includes two sets of considerations, sacrifice only one. Now, while the sacrifice theory in itself, as we have seen, is not sufficient to make us demand any fixed scale of progression, its influence in the other direction is certainly not strong enough to countervail the productive elements of faculty, which seem to imply progressive taxation. In fact, we may go further and say that the sacrifice theory, or the consumption element in faculty, can certainly not be used as an argument necessarily leading to proportional taxation. If it does not lead necessarily to any definite scale of progression, much less can it lead necessarily to a fixed proportional taxation. But if we never can reach an ideal, there is no good reason why we should not strive to get as close to it as possible. Equality of sacrifice, indeed, we can never attain absolutely or exactly, because of the diversity of individual wants and desires; but it is nevertheless most probable that in the majority of normal and typical cases, we shall be getting closer to the desired equality by some departure from proportional taxation. In certain individual cases even regressive taxation might accomplish the result best, in other individual cases proportional taxation would be the most serviceable. But if we take a general view, and treat of the average man, — and the state can deal only with classes, that is, with average men, — it seems probable that on the whole less injustice will be done by adopting some form of progression than by accepting the universal rule of proportion. A strictly proportional rate will make no allowance for the exemption of the minimum of subsistence. It will be a heavier burden on the typical average poor man than on the typical average rich man. It



will probably be more severely felt, relatively speaking, by the average man who has only a small surplus above socially necessary expenses, than by the average man who has a proportionally larger surplus. It will, in short, be apt in normal cases to curtail disproportionately the enjoyments of different social classes.

Hence if we base our doctrine of the equities of taxation on the theory of faculty, both the production and the consumption sides of the theory seem to point to progressive taxation as at all events neither more illogical nor more unjust than proportional taxation. It may indeed be frankly confessed that the theory of faculty cannot point to any definite rate of progression as the ideally just rate. To that extent there seems to be truth in Mill's contention that progressive taxation cannot give that "degree of certainty" on which a legislator should act ; as well as in McCulloch's assertion that when we abandon proportion we are "at sea without rudder or compass." It is true that proportion is in one sense certain and progression is uncertain. But their argument proves too much. An uncertain rate, if it be in the general direction of justice, is nevertheless preferable to a rate which, like that of proportion, may be more certain but less equitable. Half a loaf is better than no bread. Stability is assuredly a good thing ; but it is highly questionable whether a stability which is necessarily unjust is preferable to an instability that works in the general direction of what is recognized as justice. All governmental actions which have to do with money relations of classes are necessarily more or less arbitrary. The fines imposed by the courts, the fixing of the rates of import duties or excise taxes are always to a certain extent inexact. And in truth, a strict proportional tax, if we accept the point of view mentioned above, is really more arbitrary, in respect to the individual taxpayers, than a moderately progressive tax. The ostensible certainty involves a really greater arbitrariness.

So also the other arguments often advanced against progression seem to be in some measure destitute of foundation. The common objection that progression is confiscation, because

it must finally end by swallowing up the whole capital, may be completely obviated, as we have seen, by making the rate of progression itself degressive; so that it would become impossible to reach one hundred per cent or any like percentage of large fortunes.

The objection that it is a fine put on industry and saving is really not applicable to progressive taxation as such, but rather to the whole system of taxation on property or income. The logical conclusion from this would be the demand for taxation only on expense; and even that would be to a certain extent a tax on industry. But it is hard to see why industry and saving should not be taxed, if it increases our capacity to pay taxes; and it is still harder to see how we can avoid taxing industry. Furthermore, it is a mistake to assume that larger fortunes are always the result of individual saving. The argument, in short, is not an argument against progression, but against taxation in general. If a moderately progressive tax is really more equitable than a strictly proportional tax, progression will be less of a fine on thrift and industry than proportion would be.

It is possible, therefore, to draw only this very vague conclusion as to the general legitimacy of the principle of progressive taxation. The practical application of the principle depends on a series of important considerations.

In the first place we are confronted by the question of incidence. If the theory of general diffusion of taxation be sound, then it is immaterial whether we levy a proportional or a progressive tax. For since the tax would ultimately be shifted to the consumer, the taxpayer would not be injured, while the consumer would bear the tax only in proportion to what he consumed. It is a singular fact that this illogical procedure of the diffusion theory has always been overlooked. For the most heated opponents of progressive taxation have been, like Thiers, advocates of the diffusion theory of taxation, without perceiving the absurdity of their position. The diffusion theory of taxation, however, we know to be entirely unsound.<sup>1</sup> Nevertheless,

<sup>1</sup> See my monograph on *The Shifting and Incidence of Taxation*. American Economic Association Publications, vol. vii, nos. 2 and 3.

so far as taxes really are shifted at all from the taxpayer, the problem of progression loses its importance. For if taxes are actually shifted, the rate in the first instance is of no essential consequence. It is only in so far as we assume that so-called direct taxes remain where they are put, that the considerations of faculty or ability are of any weight. How far this assumption is true, has been investigated in another place. For the purpose of the theoretical discussion it may be taken for granted that the problem of progression *versus* proportion must be treated on the hypothesis that the assumption is true. But when we come to construct a progressive rate in practice, we must be careful to ascertain how far the assumption conforms to reality. A progressive rate of taxation which does not reach individual faculty at all, is as unnecessary as it is illogical.

Secondly, the defence of progression rests on the theory that it is applicable to general taxation taken as a whole. It rests on the assumption that taxes are paid out of revenue, and that the whole system is framed with this end in view. But it is obviously an immensely difficult task to shape a whole system of taxation so that the average general rate will be a moderately progressive one. Actual systems of taxation are of the most varied kinds. In some taxes it is impracticable to introduce a progressive scale, as they are by their very nature proportional; so *e. g.* tithes or poll taxes, — for a graduated poll tax is really not a poll tax at all, but a class tax. In other cases the taxes in actual life are even regressive; as *e. g.* many of the indirect taxes. It would be impossible thoroughly to carry out the principle of general progression, unless we had a single universal income tax or a single property tax. But no scientific writer to-day favors a single income tax or a single property tax or, for that matter, a single tax of any kind. Thus in advocating the system of progression we must have regard to the facts of the individual case and to the general sentiment of the community. In the United States, for instance, the general property tax in its practical operation is largely regressive, especially so far as personalty is concerned. The tax reformers have quite enough to occupy their attention in trying to make the

rate really proportional, before bothering themselves with the further stage of progression. But it is all the more worthy of consideration whether new taxes that are being devised, such as the inheritance taxes or certain possible forms of indirect income taxes, may not properly be levied according to the progressive principle. It is more than likely that a number of moderate progressive taxes would after all still simply result in securing an average proportional rate for the whole system of taxation. And we have seen that some defenders of proportion in theory admit the legitimacy of certain progressive taxes as a compensation for other really regressive taxes. In practice, then, we may frequently demand progressive taxes without being at all so extreme or so "communistic" as many persons believe. But even then, of course, the practical danger that high rates of progression might augment fraud and contribute in part to the exodus of capital, is a consideration that must not be overlooked by the legislator.

Thirdly, the defence of progressive taxation rests on the assumption of faculty as the basis of taxation. Now while this assumption is good for taxation as a whole, for general state purposes, it is questionable whether the principle of benefits is not of some weight in problems of purely local and municipal finance. A discussion of the contest between these two principles and the limits of their relative applicability to different phases of public revenue would take us too far astray here. But, it may be said, it is coming more and more to be recognized that within the domain of the taxing power the principle of benefits should be followed to some extent in strictly local finance.<sup>1</sup> If this is true, the principle of progression will be of rather more limited application to some of the charges employed for the support of local government; for the theory of benefits, as we have seen, leads logically to proportion, not to progression. Thus the practical sphere of the applicability of the progressive principle would be even more circumscribed.

<sup>1</sup> For a discussion of these points see my article on "The Classification of Public Revenues," *Quarterly Journal of Economics*, April, 1893.

If, therefore, we sum up the whole discussion, we see that while progressive taxation is to a certain extent defensible as an ideal and as the expression of the theoretical demand for the shaping of taxes to the test of individual faculty, it is a matter of considerable difficulty to decide how far, or in what manner, the principle ought to be actually carried out in practice.<sup>1</sup>

Theory itself cannot determine any definite scale of progression whatever. And while it is highly probable that the ends of justice would be more nearly subserved by some approximation to a progressive scale, considerations of expediency, as well as the uncertainty of the inter-relations between various parts of the entire tax system, should tend to render us extremely cautious in advocating any general application of the principle. In last resort the crucial point is the state of the social consciousness and the development of the feeling of civic obligation.

EDWIN R. A. SELIGMAN.

<sup>1</sup> For a fuller discussion of the practical limits of the application of the progressive principle, see my monograph on "Progressive Taxation." In this will be found the arguments which on the whole seem to oppose the introduction of the progressive principle in the case of the land and general property taxes, as well as in the corporation taxes, but which show its applicability to the inheritance tax, the various forms of indirect and direct income taxation and other taxes.

## STOCK EXCHANGE CLEARING HOUSES.

CLEARING HOUSES for stock-exchange transactions, like the earlier-established clearing houses for bank transactions, are an outgrowth first of the conveniences, and finally of the necessities of trade. Originally, all clearing houses have been voluntary and more or less limited associations, founded to economize for a few in labor or in risk. But a short experience has in every case led to the adoption of the system as a uniform rule of trade. Business has adapted itself invariably to the system, and in such a degree that a return to old methods would be as impossible as a return to primitive practices of barter. These facts have shown themselves of equal application in stock clearing houses and in bank clearing houses.

The one intent and purpose of the clearing system is to reduce, so far as may be possible, the necessity for the physical transfer of commodities or money, or of that which represents them. The organized system of bank clearings, which is little more than a century old, marks an advance over the old plan of bank exchanges quite analogous to that made when the use of bank checks by individuals was substituted for the practice of paying debts with bags of gold or silver. Before the days of bank-deposit checks, the canvas bag of coin, buried in the garden or hidden behind a loose brick in the chimney-piece, fairly represented the machinery of exchange between individuals. But on a larger scale, the machinery of exchange between banks, before the days of clearing houses, was of an almost identical character. A check drawn upon one bank and deposited in another, was in those days presented by the deposit bank's messenger at its fellow-institution, to be redeemed at once in coin or legal tenders. As the business conducted through bank checks grew larger, the inconvenience and risk of this system became more obvious. Not only were there the

factors of delay and possible loss, but the requirements of money to be kept on hand or in transit under the old plan grew so extensive as to be in themselves an element of danger. In time of panic, the system became absolutely hopeless. Actual money which was needed in assured centres, where it could be readily accessible, would on such occasions be on its way back and forth throughout the city. A bank would be sending out hundreds of thousands in specie and notes at the very moment when similar amounts were on the way to it from the very institutions to which its messengers were destined. The whole system was primitive and clumsy, and the establishment of the bank clearing system in London in 1775 was at once recognized as the solution of a grave problem.

In the market for international exchange, the use of the clearing system grew up naturally, and without the need of any formal association. Old-fashioned maritime commerce was of course very largely a matter of simple barter. A vessel sailing from London with a cargo of cotton and iron goods to sell in Portugal, would practically trade its cargo for an equivalent in wines, to be brought back to England. But exact barter being often impossible, for reasons of bulk and value, the necessity arose of paying differences in money. Originally this payment was made in actual gold or silver. Thus it happened that almost every vessel sailing between the chief commercial ports carried during part of its journey a load of specie. The question of insurance and risk being a serious matter in this ocean transit, banks on which bills of exchange could be drawn grew up in all the principal cities, almost *pari passu* with the development of modern commerce. Of this the natural result was to restrict specie shipments merely to the difference between bills drawn against and bills drawn in favor of a given port — in short, to strike the balance of the port's entire commerce. In other words, the clearing-house system arose in a highly perfected form, and London became by common consent the clearing house of the commercial world. Under this system the reduction in the amount of actual money exchanged between nations was almost as great as the reduction in the case of the bank

exchanges. In the foreign commerce of the United States, for example, the combined exports and imports of merchandise, including silver, during the fiscal year 1891-92, aggregated \$1,900,000,000. The movement of securities and the transfer of credits, could it be reported, would greatly increase even this enormous total. Yet the actual exchange of gold, imported and exported, between the United States and foreign nations during this same period, was less than \$100,000,000. The average of our annual gold shipments and receipts has been far below this figure. Actual money exchanges in our own foreign commerce, therefore, are brought down by the clearing system to five per cent of the reported trade transactions, and probably in fact to a far lower percentage. It is perhaps interesting to note that in New York City the bank clearing system has reduced cash payments between banks in almost exactly the same degree, the average daily percentage of clearing-house balances to total exchanges ruling between four and five per cent.

The great pressure of business on a large stock exchange, within a strictly defined limit of time, made necessary the contrivance of a very careful and accurate system, quite outside the machinery of a stock clearing house. It will be well, before discussing the plans for stock clearings, to observe the advantages and disadvantages of this original system. The method of settling balances on the New York Stock Exchange, prior to the adoption of the stock-exchange clearing house, was the best illustration of the old plan. Under the rules of the exchange, purchases and sales are to be settled for on the next business day. The messenger of the broker through whom the sale was made, having delivered the securities contracted for, received in payment and returned to his own employers the check of the purchasing broker. If a broker had purchased from a fellow-member of the exchange a hundred shares of New York Central stock at 110, the messenger of the seller was bound, at some time prior to 2.15 P.M. on the ensuing day, to present these hundred shares at the delivery window in the office of the purchaser, and for this he would



receive a check for \$11,000. As the daily sales on the stock exchange vary from 100,000 shares to nearly a million, it is clear that an enormous amount of daily check exchanges are necessitated. Supposing 400,000 shares to be the daily average of sales, and 60 to be the average price of all the stocks sold, the checks paid out every day for stocks alone would amount to \$24,000,000. The average daily sales of bonds would increase this total by two or three million dollars.

Now the flaw in this plan is easily detected. While it is true that through the system of bank clearings there is avoided the transfer of enormous amounts of coin and legal-tender notes, the difficulty thus escaped by the bankers was transferred in a measure to the brokers. Here was a cumbersome machinery of exchange, by which it was continually necessary for a broker to have subject to his order very large deposit balances in bank. It did not of course follow that the broker must have his own money thus prepared for use. If he had bought, for himself or for a customer, a thousand shares of New York Central at the price above named, it was not essential that he should possess independently \$110,000 of idle money. On the contrary, the stock exchange's machinery was and is carefully adjusted so as to admit of his borrowing this amount on the pledge of the very stocks purchased. In the so-called "loan crowd" of the exchange, the broker, now "long" of 1000 New York Central, could offer to lend his stocks, borrowing the \$110,000 against them from other brokers "short" of the stock, or from banks or individual lenders. Nevertheless, it is clear that the demands of a day when there were \$26,000,000 in security sales must involve somewhere the actual holding, subject to the demands of the daily loan market, of \$26,000,000 in bank deposits.

In times of quiet business, the only disadvantage in all this was the clumsy mechanism of transfer. But a time of panic altered the outlook materially. When call money was bid up to an exorbitant rate, or refused on certain classes of collateral, or, worst of all, when the money market was "cornered," as happened accidentally in 1887 and through deliberate pur-

pose at other times, the "shifting" of loans, on such an expanded basis, became a very serious problem. On the day of the famous "flurry" in Manhattan Elevated stock, July 15, 1887, when the losses of one financier in the grain market were made good by the calling in of stock-exchange loans outstanding to the credit of another financier, the market rate for loans on all classes of security went up to three-eighths of one per cent a day. There were brokers active in the market whose purchases of stock that day amounted to, say \$600,000, and whose sales amounted to \$400,000. Under the then existing system, checks to the amount of a million dollars passed through the hands of such a broker, and the total of payments represented substantially a million dollars obtained by one party or the other in the loan market. The structure of outstanding loans having, for causes both unusual and unexpected, suffered violent disturbance, a very large percentage of these million dollars in loans, arising from the trades of a single broker, had to be renewed in the midst of a chaotic money market. Now it was obvious that whatever had been this broker's money transfers in fact, in theory he had only paid out a balance of \$200,000. If it had been possible to strike off a balance sheet of his transactions for the day, the settlement would have involved his payment of that amount and that only. If, for example, all of his million dollars' worth of purchases and sales had been transacted with one other broker, the day's business might readily have been settled by the simple payment of a single check for \$200,000. It is the fundamental purpose of the New York Stock Exchange Clearing House to strike such balances for every exchange member, precisely as if his dealings had been with a single other member. In one shape or another, this has been the intent of the stock clearing-house system, in all its various forms and applications.

The system of clearing houses for stocks is not new. It was adopted in the New York Stock Exchange only in the early months of 1892, but it has been in existence elsewhere for at least twenty-five years. The earlier arrangements for this purpose, however, by no means did away with all the

difficulties above described. Ordinarily, in the first experiments, they took the form of the so-called "ringing out" of contracts in the same security. By this plan, if A had sold B a given amount of one security, and if B had presently sold the same amount to C, the series of trades could be personally adjusted between the three traders, so that the only actual exchange required would be the transfer of the securities from A to C. Of course the number of traders in the series might be extended indefinitely; for the system did not require that the prices at which the trades were made should have been uniform. B may owe to A a thousand dollars for the first purchase of the block of stock, and C may owe to B twelve hundred for the second purchase, by reason of an advance in the price between sales. But this two hundred dollars difference would not affect the "ringing out" of the contracts. Money balances would still be settled individually between the contracting brokers; the unofficial clearing system would merely avoid the necessity of frequent transfers. In substance, this is the system used by the New York and other produce exchanges for the clearing of grain transactions; but it has been improved upon in practically all the prominent stock exchanges.

The improvement, however, has been chiefly in the line of extending the principle so as to apply to the whole membership of a stock exchange, and this has necessitated the establishment of regular clearing houses for stocks. The first official establishment of this kind in Europe was founded at the *Handelskammer* of Frankfort in May, 1867, principally for the purpose of dealing in government securities, United States bonds in particular. A brief experiment here showed that a "settlement" involving the exchange on brokers' books of \$250,000,000 in securities could be carried out by the actual delivery of not more than \$5,000,000. The Berlin exchange adopted the system in 1869, Hamburg in 1870, Vienna in 1873 and London in 1876. The Paris Bourse, owing to its peculiar system of limitation on exchange membership, has never established a regular clearing house for stocks; but the same

ends are attained by a voluntary comparison of accounts by brokers' representatives, similar in its general workings to the system of bank clearings.

It should be noticed, as the principal feature of the European stock clearing houses, that their purpose is to deal with exchanges, not of money, but of securities. Their work is made up solely of a comparison of contracts to receive and to deliver securities between the brokers concerned. The principle is thus merely an extension of the "ringing-out" plan already described. In London and in most of the continental cities, the scope of the clearing is made broader through the system of a fortnightly settlement of stock-exchange accounts. In the course of two weeks, it will naturally follow that one broker will have contracted on different days to buy and to sell, in considerable quantities, the same security. Supposing him in that period to have contracted for the purchase of half a million in consols, and to have entered on contracts for the sale of an exactly equal amount, his clearing-house accounts will balance, and he will not be obliged to make or to receive any deliveries whatever. The series of transactions may have brought him or his customers a handsome profit, or they may have involved a heavy loss; of this the clearing house can take no notice. Following the plan adopted in all stock clearing houses, the several securities are entered on the books at an arbitrary and uniform clearing price, and on this basis the accounts are squared. The London brokers do indeed undertake to clear their money exchanges outside of the clearing house, but the system is of less general application, and is not practiced by all the exchange membership. The Vienna exchange clears its stocks every second day, instead of every fortnight, but its methods are identical with the others.

The system of clearing brokers' accounts both for securities and for money seems to have taken root nowhere but in our own country. Curiously enough, the principle of clearings for brokers' money transactions actually preceded in its application, by several years, the establishment of regular stock clearing houses. But it was not applied to trading in securities. The

rise of the enormous speculation in gold, during the later years of our Civil War, was the occasion for this undertaking. The members of the New York City Gold Exchange early discovered the advantages attainable under such a system; and indeed, its simplicity in the case of an institution where only one commodity was traded in gave particular grounds for recommending it. But along with many of the proper methods of the clearing system, a very pernicious principle was adopted. Brokers were required to make actual deliveries of gold or currency at the clearing house, and could not discharge their mutual obligations or even regain possession of their property until the clearing-house accounts had been tallied and the actual amounts payable or receivable by the various brokers had been ascertained. As the process of balancing the books might be delayed by pressure of work or by clerical errors, the danger of this practice in time of excitement ought to have been manifest. The gold clearing house was, in a secondary capacity, responsible for much of the panic and distress of "Black Friday," and this solely because, so long as the gold and currency were out of the possession of their owners, doubt and uncertainty prevailed regarding every maturing contract. But the gold clearing house, like the institution from whose business it sprang, passed away with the resumption of specie payments and the rise of currency to par.

It was in the Consolidated Stock and Petroleum Exchange of this city that a system of clearing both stocks and money for a board of brokers was first put into successful operation. The Philadelphia Stock Exchange had taken some steps in the same direction, but the arrangements were somewhat crude. The Consolidated Exchange introduced its system in June, 1886, and it is this system which in most of its arrangements has since been adopted by the New York Stock Exchange. The clearing-house arrangements of the Consolidated Exchange provide for delivery of stocks once a week — on Mondays — the result of which is that the average trade is made on three days' time. This, it will be seen, differs from the plan later adopted by the larger exchange,

which clears stocks daily. The difference arises mainly from the varying rules of the two exchanges prior to the introduction of the clearing house. Money balances, however, are settled daily, and there is still a considerable difference of opinion on the question of the daily clearing of stocks. The merits of this controversy need not here be discussed, except to say that the weekly system lends some ease to the carrying forward of arrangements by which money is borrowed to buy and hold stocks, while it might conceivably have the disadvantage, in a time of panic, of making impossible an immediate closing up of accounts to prevent trouble from the failure of a fellow-broker. This objection, however, does not hold under the rules of exchanges now using the system, where accounts of bankrupt brokers are closed out immediately for cash.

Several attempts were made, without success, to graft the stock clearing-house system upon the New York Stock Exchange, before the present clearing house was established. It was the apathy among the members of the exchange which chiefly stood in the way of these undertakings. Finally, a committee was appointed to investigate the problem in all its phases, and a report was submitted in March, 1892. The discussion continued to excite a rather languid interest among brokers, but the co-operation of the governing committee was secured and the plan was formally proposed by them to the exchange. It is a law of the New York exchange that a constitutional amendment submitted by the governing committee becomes a law unless vetoed by a majority vote of the exchange. Under this provision, the existing apathy helped in the ratification of the plan. The opponents of the clearing house mustered only 244 votes out of the 1100 members entitled to a voice. Therefore, although the plan was not called for even by an actual majority vote of the exchange, it became a law. The voting ended April 20, 1892, and the plan was put into formal operation on Monday, May 16. At the start, the clearing house was used on the basis of formal membership by only 340 brokers, and but four stocks were subjected to its operations.

At the close of 1892, there were 427 brokers in the clearing-house membership—embracing practically all the active operators—and at the present date twenty-one stocks are cleared daily.

This clearing house is managed by a committee of five stock-exchange members, appointed by the governing committee of the exchange. Under their direction a manager was appointed, and a room was engaged a short distance from the stock-exchange. Members of the exchange having an office near the exchange and a proper clerical force, are admitted to clear in their own names, and members not possessing such facilities may use the clearing house on the written engagement of a fellow-member, with office and clerks, to handle exchanges for them. To meet the expenses of the clearing house, a charge of two and one-half cents is imposed on every hundred shares of stock, including balances, and without regard to par value. The broker who undertakes to use the clearing house is provided with "clearing sheets," tickets and drafts, for use as stipulated in the rules. Before 4.15 P.M. on all full business days, and before 1.15 P.M. on the Saturday half-holiday, the seller of stocks sends to the office of the buyer his "deliver ticket"; this being evidence that the transaction is duly entered on his books. The buyer at the same time sends to the seller's office his "receive ticket." This exchange of tickets suffices for purposes of comparison, and the tickets, sent at the proper time to the clearing house along with the brokers' sheets, serve to keep track of the transactions at headquarters.

A longer time is allowed to brokers for the preparation of their sheet of the day's transactions. These sheets must be delivered at the clearing house before 7 P.M. on Mondays, Tuesdays, Wednesdays and Thursdays, and before 4 P.M. on Saturdays. On Saturdays, however, there is no formal clearing; but Friday's transactions are compared by exchange of tickets on Friday afternoon and entered on Monday's sheet. The clearing-house sheet of a broker comprises the record, made up into "receive" and "deliver" columns, of all his transactions for the day. As this sheet will ordinarily include trades in a

considerable number of securities, the transactions in each separate security are to be grouped together. All transactions having been entered in one or the other column, the balance is struck. If the sheet as drawn up by the clearing house shows a debit balance, the difference is entered as "Balance cheque," and the sheet presented at the clearing house must be accompanied by a check for the balance on a clearing-house association bank near Wall Street, drawn to the order of the stock exchange clearing house's own bank. If on the other hand the sheet shows a credit balance, it must have with it a draft on the clearing house's own bank for the amount of the difference.

Precisely here comes in the interesting mechanism of the money clearings. It does not by any means follow that the purchase, on one day, of securities greater in value than the amount sold, involves a debit balance on the clearing-house sheet, and the consequent requirement of a check to the order of the clearing-house bank. This depends chiefly upon the question whether the broker is "odd" or "even" in his transactions in stocks of one kind. Let us suppose, first, a sheet in which the broker was "even."

| RECEIVED FROM |     |           | PR.  | AMOUNT.  | DELIVERED TO |     |           | PR. | AMOUNT.  |
|---------------|-----|-----------|------|----------|--------------|-----|-----------|-----|----------|
| A. B. C.,     | 100 | St. Paul  | 80½  | \$8,050  | A. Bros.,    | 600 | St. Paul  | 79  | \$47,400 |
| D. & Bros.,   | 500 | "         | 80½  | 40,125   | A. & Co.,    | 300 | Lk. Shore | 134 | 40,200   |
| A. Bros.,     | 100 | Lk. Shore | 135  | 13,500   | C. & Son,    | 100 | New Eng.  | 47½ | 4,750    |
| B.C.& Co.,    | 200 | "         | 135½ | 27,100   |              |     |           |     |          |
| K.N.& Co.,    | 100 | New Eng.  | 48   | 4,800    | Bal.Cheque   |     |           |     | 1,225    |
|               |     |           |      | \$93,575 |              |     |           |     | \$93,575 |

It will be noticed in this table that the sheet shows transactions in every stock for an equal amount of shares on each side of the account. Of St. Paul 600 shares were bought, 600 sold. The transactions in Lake Shore and in New England balanced similarly. So far as concerns the amount of the several stocks coming into or passing out of his hands, the broker is therefore



in exactly the same position at the close of the day's business as he was at its opening. Under the old system of stock-exchange transfers, it would have been necessary for him to have received 1000 shares of stock, and to have delivered 1000. Under the clearing-house plan, he neither receives nor delivers a share of stock. This is an obvious gain. But the prices at which he bought were not those at which he sold. At the contracted prices, his purchases demand payment of \$93,575, while his sales entitle him to \$92,350. Under the old system he would have been required for purposes of settlement to issue five checks and to receive three, and bank balances to the aggregate amount of \$185,925 would have been drawn upon to settle the day's transactions. The clearing house makes possible the settlement of his whole day's trading in a single check for the small balance of \$1,225.

But suppose that the amount of his transactions in each of the several stocks does not balance. The following sheet may serve as illustration :

| RECEIVED FROM |      |           | PR. | AMOUNT.  | DELIVERED TO |      |           | PR. | AMOUNT.  |
|---------------|------|-----------|-----|----------|--------------|------|-----------|-----|----------|
| A. B. C.      | 900  | St. Paul  | 80  | \$72,000 | B. & Bro.    | 500  | St. Paul  | 80½ | \$40,250 |
| M. & L.       | 100  | "         | 80½ | 8,075    | G. & Son.    | 1000 | No. West. | 118 | 118,000  |
| D. E. & F.    | 1000 | No. West. | 119 | 119,000  | M. & O.      | 400  | Mo. Pac.  | 59  | 23,600   |
| S. Bros.      | 1000 | New Eng.  | 48  | 48,000   |              |      |           |     |          |
| T. & W.       | 200  | Mo. Pac.  | 58  | 11,600   |              |      |           |     |          |
| Bal. deliver  |      |           |     |          | Bal. receive |      |           |     |          |
| Delivery Pr.  | 200  | Mo. Pac.  | 57  | 11,400   | Delivery Pr. | 500  | St. Paul  | 80  | 40,000   |
| Bal. draft.   |      |           |     | 775      | "            | 1000 | New Eng.  | 49  | 49,000   |
|               |      |           |     | 270,850  |              |      |           |     | 270,850  |

In glancing over this sheet, it will be observed that the transactions in Northwestern stock comprised 1000 shares bought and 1000 shares sold. Under the clearing-house system, therefore, there will be neither receipts nor deliveries of this stock by the broker presenting the sheet. But with the other stocks traded in, the case is different. Of St. Paul stock, 1000 shares in all were bought and only 500 sold.

There is left in this stock, therefore, after the clearing-house operations, a balance of 500 shares to be received. Similarly, in the case of New England stock, of which 1000 shares were bought and none sold, the broker must receive 1000 shares. In Missouri Pacific stock, on the other hand, 200 shares were bought against 400 sold; so that the broker concerned has left a balance of 200 Missouri Pacific to deliver. These balances are duly entered, as the specimen sheet indicates, on their respective sides of the account.

Two further points in the clearing-house arrangements must here be noticed. One is, that the brokers between whom given amounts of stock are to be actually exchanged are named arbitrarily by the clearing-house manager. Any broker having 500 shares of St. Paul to deliver may be directed to deliver it to the broker presenting the above sheet. He may have had no personal transaction with the broker assigned to him; that is a matter of no concern. The clearing-house deals with exchanges, not with bargains — with balances, not with persons; and so long as the entire list of deliveries due is assigned in correct proportion to the items in the list of receipts due, the clearing-house books balance and every broker will have received the stock to which he is entitled.

The other point is, that in assigning balances of stock for receipt or delivery, the clearing-house authorities reckon the value by use of an arbitrary price. The custom is to take the even price nearest to the quotation of the day's last sale in the stock concerned, and these prices are made public immediately after the close of the exchange, and are sent out on the tape of the official "ticker." This "delivery price" is not necessarily, and, indeed, not usually, the actual price at which the sales were made. In the specimen sheet above, for example, the three actual transactions in St. Paul were made, respectively, at 80,  $80\frac{3}{4}$  and  $80\frac{1}{2}$ . The arbitrary "delivery price" was 80, which is not even an average price. This fact, however, can make no difference in the accuracy of the final result, because the amount of the clearing-house check or draft assigned to balance the sheet is larger or smaller according as the arbitrary clearing-house

values for delivery vary from the actual values. A moment's study of the sheet will prove this. Suppose, for example, that all the transactions in St. Paul had been made at 80, both those in Northwestern at 119, that in New England at 48, and those in Missouri Pacific at 57, and that these figures had also been selected for the "delivery prices." It is clear that when the "deliver balance" of 200 Missouri Pacific, and the "receive balance" of 500 St. Paul and 1000 New England had been added to their respective sides of the account, the sheet would then have balanced, and that no draft would have been required. For the "receive" and "deliver" balances checks must, of course, pass between the brokers assigned for exchange of stocks, precisely as was done on a far larger scale under the old system. The "balance draft" or "balance cheque," as the case may be, merely offsets the natural discrepancy arising from the use of an arbitrary price in calculating the money value of stock balances.

This ingenious book-keeping device extends to the process of money exchanges all the economical advantages earlier secured in the exchange of stocks. The shares bought and sold in this sheet do not offset one another, as they did in the preceding table, but the amount of deliveries made necessary by the recorded transactions is reduced from 5100 shares, under the old system, to 1700 shares under the new. The exchange of checks, meantime, is economized in similar measure. The old system would have required the issue of checks for \$258,675, and the receipt of checks for \$181,850 — a draft upon money balances amounting in all to \$440,525. Under the system of clearings, checks for only \$89,000 need be issued by this broker, and checks for only \$12,175 received — a total of \$101,175. Here is a saving of more than seventy-five per cent in the amount of money which a broker must be able to command for use in his day's settlements. Again assuming twenty-five million dollars to be a fair average of a day's total sales of securities, the immense saving to the money market through the operations of the clearing house will readily be understood. The clearing-house authorities have computed

that the saving in certifications, or, in other words, in the drawing of checks, since the system went into operation has been no less than \$5,000,000,000 — an average of \$400,000,000 per month.

It remains only to consider several objections which were raised against the clearing-house plan at the time of its proposal in the New York Stock Exchange, and to see how far these objections have proved of force. The doubts which existed in the minds of brokers familiar only with the old gold clearing house have been dissipated. It has already been explained that the radical defect of that system—the actual entrusting of securities and money to the clearing-house authorities—is altogether avoided by the machinery of the present plan. A more serious objection was that of publicity, the brokers fearing that clearing-house clerks, seeing all the sheets of the day's business, would be able to get important information regarding transactions which the principals wished to keep secret. This fear has so far proved groundless. The broker does not "give up" the name of his customer on the sheet; hence all that can be known is how much any one broker is doing on either side of the account. But a stock exchange member on the floor has only to note down the bids and offers of a fellow-broker to arrive at exactly this information; hence it can hardly be said that the risk of publicity is increased by the intervention of a clearing house. As a matter of fact, no suspicion of the kind has ever yet rested on the institution.

There was also a legal objection, based on the theory that as the state law requires in all contracts "an intent to deliver," transactions merely cancelled from both sides of the general balance-sheet would fall outside the provision of the statute. A multitude of decisions, however, affecting both stock and grain exchanges, have defined the law as applicable to contracts where actual delivery is enforceable. This is plainly the case, under the stock exchange's own rules, with every bargain made on its floor. Whether or not, through the balance-sheet operations of the clearing house, the stocks contracted for are in

the end delivered, it remains true that the contract was entered upon with "intent to deliver," and that the seller was at the time of contracting compelled to put himself in such position that deliveries could have been made.

It is interesting to observe that many brokers and clerks opposed the clearing-house system bitterly, even after its introduction, on the ground that it made their presence almost useless early in the day, and extended considerably the later hours of business. But this opposition has now almost wholly disappeared, the system's practical operation having shown that while it does necessitate later working hours than of old for clerks, it brings relief from a pressure of business that at times used to strain the facilities of an office almost beyond endurance. Scenes such as were witnessed in Wall Street in 1884 and 1887, when cashiers and clerks worked all night over the books, and when extra messengers for deliveries could hardly be had for money, are not likely to be witnessed again. The language used by the special committee in introducing the new rules is therefore in a fair way to receive unquestioned justification:

If this exchange is to take its proper place in the future among the stock markets of the world, a system of doing business will be required which will stand the strain of a volume of business larger than any heretofore known.

ALEXANDER D. NOYES.

## RESPONSIBILITY FOR THE WAR OF SECESSION.

### I.

THE repeal of the Missouri Compromise led up to a speculative dispute between President Buchanan and Senator Douglas, as to the time when the voters of a territory could decide whether or not slave labor should exist therein. The debate, as it went on, involved an inquiry into the condition of a slave taken by his master into a territory where there existed neither local law nor law of Congress regulating the relation of master and slave. Did the federal constitution accompany such master and slave into the territory, so as to prevent either Congress or the territorial legislature, or both combined, from sundering the tie? The dispute became acute when President Buchanan sent the Lecompton Constitution to Congress, and thereupon advised the admission of Kansas into the Union as a state. Douglas denied that the Lecompton Constitution had been approved by the voters of the territory, and condemned Buchanan's conduct in transmitting it to the Senate. Then and there came a rift which disrupted the Democratic Party at Charleston, in 1860, and entailed the civil war, whereby were emancipated from slavery three millions of the African race. The rift was not closed either by the decision of Congress to send back to Kansas the Lecompton Constitution, or by the vote of Kansas in August, 1858, refusing to tolerate slave labor, or by the adoption of a free-labor constitution at Wyandotte in 1859, under which, some twelve months afterward, Kansas became decisively a free state.

The dispute between Buchanan and Douglas was academic, because, when the former was inaugurated president, Kansas was peaceful, and the territorial government, having been recognized by Congress, was in full sway. With the reins in a firm hand like that of Geary, an honest vote upon the critical question was secure, and the time had arrived for transforming the

territory into a state. The exculpation of his own conduct made by ex-President Buchanan in 1865, to the effect that the supreme court had said that the voters of a territory could not, when acting through their legislature, interfere with the relation of master and slave, but could interfere only when acting through a convention assembled to frame a state constitution, was irrelevant as to Kansas, because the territorial condition was approaching its end.

Mr. Lincoln, with foresight and adroit purpose singularly unnoted by myth-making historians, effectively enlarged, by his debate with Douglas in 1858, the breach between the latter and Buchanan. Douglas intimated that the two troublesome and, as he dealt with them, fatal questions presented to him at the Freeport meeting were framed by concerted action of the partisans of Buchanan and of Lincoln. A local victory was won by Douglas in Illinois and he was by the legislature chosen to be senator, but when Congress re-assembled in the next December he was not re-elected to be chairman of the committee on territories. In the next month but one, and not long before the assembling of the National Democratic Convention at Charleston, a series of resolutions were presented to the Senate by Jefferson Davis, which, towards the end of May, and in the absence of Douglas by illness, were adopted by every Democratic vote excepting that of Senator Pugh of Ohio. Those resolutions explicitly condemned the contentions of Douglas respecting the power of Congress or a territorial legislature to annul or impair the right of a citizen to take slave property into a territory and there hold it. As a result of that theoretic dispute between Buchanan and Douglas, skilfully inflamed by Lincoln, and of that Senate vote, there were four presidential tickets in 1860, and Lincoln won with only 1,866,352 out of the 4,676,853 ballots cast.

The blow which severed Douglas from his long existing connexion with the territorial committee of the Senate was a painful one for him to bear. He had been sent by Illinois to the lower house of Congress in 1843. He had been chosen to the Senate in 1847, 1852 and again in 1858. He had been

chairman of the House committee on territories during the twenty-ninth Congress. He had reported the joint resolution for the admission of Texas. He had proposed in the cases of Texas and Oregon, and carried in the case of Texas, the extension of the Missouri Compromise line (which he denounced in 1854 as unconstitutional) to the extreme western boundary of our then territorial possessions. He had been for eleven years chairman of the Senate committee on territories. He had reported bills to create territorial governments for Minnesota, Oregon, New Mexico, Utah, Washington, Nebraska and Kansas, and to admit Iowa, Wisconsin, California and Minnesota as states. He had been conspicuous in the legislation which completed the Compromise of 1850, on which, as a "finality," the Democratic party and its candidates stood in their successful presidential canvass of 1852.

## II.

Undoubtedly the first link in that chain of cause and consequence on which at last hung the war of secession was the movement in 1854 for the repeal of the Missouri Compromise of 1820. The acquisition of Louisiana and Texas, the Mexican War, the cession of California, Utah and New Mexico, were precedent events, but not causal in the same sense.

On February 23, 1855, Douglas said in the Senate :

The Nebraska Bill was not concocted in any conclave night or day. It was written by myself, at my own house, with no man present. Whatever odium there is attached to it, I assume.<sup>1</sup>

Certain modern historians endeavor to deprive Douglas of the sole paternity of the Missouri Compromise which he thus claimed in 1855. They intimate, explicitly or vaguely, as may happen to suit the color and shadows of their text, that President Pierce invented, or suggested, or with Douglas contrived, the plan of repeal which the Senate committee reported. The intimation is groundless.

At the time of the repeal of the Missouri Compromise, the Democratic Party held the executive departments of the federal

<sup>1</sup> Appendix to Congressional Globe, 2d session 33d Congress, p. 216.



government, the supreme court and both houses of Congress. Its majority in the Senate was excessive. Whatever may have been the constitutional limitations of the power of Congress in regard to slave labor in the territories, it is not denied that the preparation and the organization of the forms of a territorial government are the business of Congress. It alone has the power "to dispose of and make all needful rules and regulations respecting the territory or other property belonging to the United States." The president can approve or he can veto a bill passed for that purpose. If he thinks it necessary or expedient to organize a territorial government, he can commend the work to the immediate attention of Congress. President Pierce had made no suggestion to Congress concerning a territorial government for Nebraska or Kansas. The presumption therefore is that he did not interfere in the preparation of the enactment.

A bill to organize the territory subsequently known as Nebraska and Kansas had passed the House during the last days of President Fillmore's administration, but had been laid aside in the Senate on account of objections to a clause relating to the Indians and because the close of the session was near. That same bill was again presented to the Senate in December 1853, and was sent to the committee on territories, composed of Douglas of Illinois, Houston of Texas, Johnson of Arkansas, Jones of Iowa, Bell of Tennessee, and Everett of Massachusetts. The last two were Whigs and became candidates of the Constitutional-Union Party in the presidential canvass of 1860. On January 4, 1854, Douglas, as chairman of that committee, brought in a new bill and presented an elaborate report which distinctly refused to disturb the Compromise of 1850. The report urged reasons why the controversies should not be reopened which had produced the "fearful struggle" of that year. It identified and described those controversies, and especially referred to the constitutionality of the astronomical line of 1820 as one of them. It declared that the committee now adopted the course pursued on "that memorable occasion" of 1850, and therefore refrained from "affirming or repealing" the line of 36° 30'.

Thus the matter stood till twelve days thereafter, when Dixon, a Whig senator from Kentucky, the immediate successor of Henry Clay, gave notice of his intention to move an amendment to the bill declaring that the law prescribing the Missouri line should not be so construed as to apply to any present territory, but that citizens should be at liberty to go into such territory with their slaves. As the alpenstock of a mountain climber in the highest Alps may start an avalanche which carries disaster and death into the quiet vale below, so that procedure by Dixon opened the way for national woes unnumbered. It has been said that Douglas immediately went to Dixon and privately remonstrated with him. On the next day, Sumner presented in the Senate a counter-amendment confirming the astronomical line of partition between slavery and freedom. The avalanche was moving!

There has been published as history a sensational description of what was said and done a day or two afterward while Dixon and Douglas were driving together in the environs of Washington. However true or false that story may be, Douglas did straightway move the Senate to recommit the bill, and it was recommitted on the understanding that a report should be made on the Monday next ensuing. On the Saturday before that Monday, the committee agreed on an amendment setting forth that the Missouri line of 1820 had been "superseded by the principles of the legislation of 1850," and was therefore "inoperative." It subsequently appeared that Douglas had privately remonstrated with Dixon against the amendment proposed by the latter because it "affirmatively legislated slavery into the territory"; but Dixon explained that he only proposed to put a slave owner wishing to go to Kansas with his slaves, in the condition in which he would be if the Missouri line did not exist, and he accepted the amendment proposed by the committee.

There is not yet any evidence that before the day of the Dixon amendment anybody contemplated a serious effort to destroy the partition line. The subsequent unwillingness of those in the Senate concerned therein to enact an explicit re-

peal, indicates how delicate, critical and even dangerous they deemed the execution of the new plan. To declare that "principles" had "superseded" a positive enactment and so made it "inoperative," was on its face a queer form in which to put a declaration of repeal on the statute book. That plan was, on Sunday, January 22d, proposed by Douglas to President Pierce in behalf of the Senate committee. It was the first time the president had heard of it. He had given little, if any, attention to what the Senate committee had been doing in respect to organizing territorial governments. A President of the United States, especially when the office-seekers have encamped round about him, has little opportunity to supervise the doings of Congressional committees at the other end of Pennsylvania Avenue.

Mr. Pierce was at that time perfectly familiar with all the details, even the most minute, of the Texas annexation controversy and of the Compromise of 1850. His debate with John P. Hale in New Hampshire, eight or nine years before, over Texas—a debate as conspicuous then in New England as was that in Illinois, a few years later, between Lincoln and Douglas,—and the movement which he had led in New Hampshire to throw over the Democratic nominee for governor because the latter questioned the "finality" of the Congressional legislation of 1850, could not and did not leave Pierce in any doubt concerning the relation of the Wilmot Proviso, or the adjustment of 1850 (which had suppressed the proviso), to the enactment of 1820. He had vindicated the legislation of 1850 as a pacification, an accommodation, an arrangement by a compromise of conflicting sectional theories. He had upheld it, in his letter of acceptance of the Baltimore nomination, as a "finality." He had been chosen to be president on that issue. In his inaugural address he again referred to that reconciliation in 1850 of conflicting opinions respecting the rights of slave owners to go into new territories carrying slave property. He said:

Notwithstanding differences of opinion and sentiment which then existed in respect to details and specific provisions, the acquiescence

of distinguished citizens whose devotion to the Union can never be doubted has given renewed vigor to our institutions, and restored a sense of repose and security to the public mind.

And he added:

This repose is to suffer no shock during my official term, if I have power to prevent it.

Those opinions, purposes, ideas and sentiments had been distinctly approved by each member of the cabinet before his name had been sent to the Senate.

Many weeks before the inauguration of President Pierce, all the members of his cabinet excepting the postmaster-general had been invited to accept the places which they all retained throughout the term.<sup>1</sup> All who had been invited accepted save the secretary of war. He preferred to remain a planter and not again to enter public life, but the president-elect, after Davis had refused the War office, invited him to come to Washington for the inauguration, and he came, though owing to railway delays he did not arrive till the day after the ceremony. When they met, the president explained his purpose to put in the hands of Davis, who was pre-eminently fitted for the work, the surveys for the projected Pacific railways. What had been said by the president in his inaugural address in relation to the "finality" of the Compromise of 1850 was by Davis considered during the consultation, and it had his approval as Democratic duty and policy for the future. I have never seen or heard of a scintilla of competent evidence to indicate that while in the cabinet he encouraged, or tolerated, such a change as the historians depict. His own

<sup>1</sup> Mr. Rhodes (vol. I, p. 389), in order to embroider the fiction of "many counsels" over a New York member of the cabinet to reconcile "Hards and Softs," says: "Pierce did not really decide who should be his secretary of state until he had actually been one day in office, for up to the morning of March 5th that portfolio had not been offered to Marcy." As a matter of fact, Marcy had previously journeyed (without a brass band and a staff of newspaper reporters) from Albany to Boston, had there met the president-elect by arrangement, and had accepted the State Department. He went soon after to the South and remained there till he came thence to the inauguration. The historian is blind to Marcy's grim fun in a teasing letter to Buchanan.

appreciation of the character of the president, the ties of reciprocal fidelity, personal and official, which united them and which Davis has alluded to in his book, make it difficult for one to suspect that he ever conspired with Douglas, or with any one else, against what he knew to be the commitments of his chief. And besides, there was never any love lost between Davis and Douglas.

When Douglas came that Sunday and reported what had taken place in the Senate, the "sense of repose and security" had been assailed. The "shock" had come. The consenting thereto, the preparation therefor, in the Senate had been unsuspected by the president. In the first volume of his *Rise and Fall of the Confederate Government*, Davis says (p. 28) with perfect sincerity and truth: "This bill was not, as has been improperly asserted, a measure inspired by Mr. Pierce, or any member of his cabinet."<sup>1</sup> Whether or not

<sup>1</sup> At this point it is edifying to glance at what the historians have written. Von Holst says: "The first condition of the success of his [Douglas'] plan was, of course, the emphatic co-operation of Pierce" (Lalor's Translation, vol. iv, p. 350). "Pierce's subsequent course excludes all doubt that it was not moral scruples but these party political considerations, with sharp personal points, which caused him to yield involuntarily when Douglas now proved to him the necessity of approaching the slavocracy another step" (p. 318). "He [Pierce] did not have courage enough to descend into such depths of infamy" (p. 309). "Whether Douglas had come to an understanding with him [Pierce] before he made his report of the 4th of January and thought out the 21st section of his bill, I cannot discover from the sources at my command" (p. 309). "Marcy had not the penetration and character to use his short hour, when events brought the crown of immortality within the reach of his hand" (p. 353). "Marcy, too, declared the 'principle' to be democratic, and only considered it questionable whether such an application of the principle was proper in this case" (p. 352).

Schouler says (p. 231): "Nor had Douglas himself the hardihood of perpetrating the new and iniquitous issue without a previous assurance of the President's support and approval." "Marcy, it is well known, was dissatisfied with the scheme from first to last, though loving party and place too well to forsake his post. Jefferson Davis, the Secretary of War, was the President's inspirer in this business, and, by his own admission, negotiated the compact between the White House and the territorial committee rooms of the Capitol."

Rhodes says (vol. 1, p. 431): "Douglas first prepared the bill without consultation with any Southern men." "Douglas had written his report, and prepared his first bill, without any consultation with the President. . . . Pierce, through his own organ, the *Washington Union*, which faithfully represented his opinions, had approved the report of the committee on territories, but he did not regard

President Pierce decided wisely in refusing to commit his administration against a measure which he then for the first time discovered his party in the Senate resolved with substantial unanimity to push to a vote, and in favor of which the Senate stood nearly four to one, may possibly be now an open question. He did decide, however, that the threatening aspect of the foreign affairs of the United States did not permit him to enter, at that time, upon a quarrel with the Senate over a measure to organize territorial governments for Kansas and Nebraska.<sup>1</sup>

The president clearly realized that the Van Buren Free-Soilers had decided his election. It was the defection of this party from Cass in 1848 that had given New York to the Whigs and made Taylor president. But four years later the great body of those Free-Soilers who had been Wilmot Proviso men stood firmly by Pierce (even although he vindicated the suppression of that Proviso in the interest of the Compromise of 1850), as did also the opposing Democratic fraction in New York, known as "Hunkers." The latter, however, resented the preference of the president-elect for Marcy over Dickinson as secretary of state. Mr. Pierce desired to show no partiality on account of past opinions on the slavery question, and especially on the Wilmot Proviso, among those north or south who had voted for him. Accordingly, in filling the chief

with favor the amendment of Dixon" (p. 436). "We may feel certain, however, that it was the persuasion of Davis at the private interview [Jan. 22] which induced the President to give his approval" (p. 438).

Benton, in his *Historical and Legal Examination of the Dred Scott Case*, says: "This is the record history of that abrogation of the Missouri Compromise into which the administration of Mr. Pierce was *forced*" (p. 172).

<sup>1</sup> The very strained relations in 1853-54 between Great Britain and the United States, manifested by the men-of-war confronting each other off the Canadian coast, were explained in a paper prepared by the writer, and read before the Grafton and Coös Counties Bar Association of New Hampshire, in September 1892, on "The Canadian Reciprocity Treaty of 1854." The situation was well described in a speech by Lord Elgin: "A British admiral and an American commodore are sailing on the coast with instructions founded upon opposite conclusions, and a single indiscreet act on the part of one or the other of these naval officers would have brought on a conflict involving all the horrors of war." That treaty, which happily dispersed the hostile vessels, was not ratified by the Senate till a few days after the enactment of the Kansas law.

federal offices in New York City, the president appointed from the "Hunkers" Dickinson to be collector of the port of New York and Charles O'Connor to be district attorney, and from the "Barnburners" he made John A. Dix assistant treasurer, Heman J. Redfield naval officer, and John Cochrane surveyor. The appointment of General Dix was so severely condemned in the South as an elevation of a "Free-Soiler and abolitionist," that Mr. Pierce wrote an elaborate defence of himself to Garvin of Georgia, in August, 1853. Toombs of that state arraigned the president for betraying the Compromise of 1850 "by bringing his enemies into power," meaning the advocates of the Wilmot Proviso. The quarrels between the rival Democratic fractions in New York could not be appeased, and they culminated when the Democratic state convention assembled at Syracuse. Each fraction, — "Hards" and "Softs," as then described, — nominated a ticket of state officers. The Whig candidate for secretary of state received 160,553; the candidate of the "Hards" received 99,835; and the candidate of the "Softs" received 96,137 votes. The platforms of the rival fractions were substantially alike in what they said of slave labor. Probably the Washington *Sentinel*, which posed as a Democratic organ, was not far astray when, after the New York election, it thus defined the resentment of the "Hards":

Whether a statesman should have seen it or not, one thing is certain. The moment the president selected Governor Marcy for a member of his cabinet instead of Mr. Dickinson, the fate of the Democratic union in this state [New York], if not that of the administration itself, was sealed.

How much that condition of the Democratic party in New York and the relation of Pierce and Marcy to it, had to do with the several phases of the Kansas bill as presented by Douglas, is now pure conjecture.

The historians of the period have been greatly influenced in their views as to Mr. Pierce's connection with Douglas' bill by the assumption that the Washington *Union* was an "organ" of the president. Their search for the facts in this matter seems to have been inadequate. We are now encompassed by the

multitudinous life and action of newspapers swarming between the Atlantic and the Pacific, full of enterprise, with various political leanings, the common business object of profit, and the class interest of power, but we have long outlived the "organ" which began its music on the bank of the Potomac more than half a century ago when Jackson called Blair from Kentucky to finger the keys of the *Globe*. During the three terms of Jackson and Van Buren, the *Globe* may possibly have been the interpreter of the administration, but President Polk having exchanged Blair for Ritchie, contrary to the earnest advice of ex-President Jackson, the *Globe* was merged in the *Union*. After Ritchie's death the *Union* passed from one proprietor to another till, in the beginning of 1853, it was owned by Armstrong of Tennessee, an estimable man who paid little attention to its editorial columns, but was chiefly concerned in promoting his own candidacy for the office of public printer.

At that time there was not a government printing establishment as now, but a superintendent of public printing was appointed by the president, with the consent of the Senate, and each house chose by ballot its printer. The political situation in the summer of 1853 made it feasible to divide the printing of the two houses and choose two printers. Beverly Tucker, a Virginian, had been an unsuccessful candidate for marshal of the District of Columbia, and in August of that year he began the publication of the *Sentinel*, which very soon criticised the administration and was from the outset an active rival and antagonist of the *Union*. After Congress had assembled in 1853, Armstrong became printer for the House, but in the Senate he was defeated by Tucker, for whom Whigs and Free-Soilers, including Seward, Sumner, Chase and Wade, voted, although Tucker was then co-operating with the most extreme pro-slavery men. The *National Intelligencer*, which had been an exponent of Whig opinions ever since that party came into existence, received only one vote. Tucker had twenty-seven votes, Armstrong sixteen. Douglas was reported as absent. Armstrong died in February 1854, and Nicholson,



then an editorial writer on the staff of the *Union*, was elected his successor by the House. The tenure of a printer was the pleasure of the house which chose him, and the emoluments of the position constituted a very important item in the finances of a newspaper controlled by an incumbent. Although the life of the *Union* newspaper thus depended on keeping the good will and the printing patronage of the Democratic House, and although it was obvious that if that journal was the "organ" of anybody or anything, less or other than the whole Democracy, it was the "organ" of the House, yet the historians persistently represent it as in all things editorial the mouth-piece of the president. Its proprietors and conductors did not, for obvious reasons of self-interest, actively disavow such pretensions till 1855, when, for reasons equally obvious, they denied that they had ever held organship.<sup>1</sup> Forney, then the Clerk of the House of Representatives, was an editorial writer on the *Union*, and was at the time, as he discloses more or less clearly in his *Anecdotes of Public Men*, doing his best to promote the nomination of Buchanan in 1856.

The insistence by certain newspapers hostile to the president that everything printed on the editorial page of the *Union* was inspired by him, or by a member of his cabinet, presented amusing incidents. At a time when American opinion sympathized deeply with Kossuth, who, overthrown in Hungary by the co-operation of Russia with Austria, had come to our shores, and not long before had left them, an editorial appeared in the *Union* eulogizing Russia. The article, brilliant enough to compel either commendation or censure, was written by Roger A. Pryor, now a valuable member of the New York bench. The opposition press fell upon the article, and made each member of the cabinet in turn responsible for it. European commentators accepted the view that the article had government inspiration. Meanwhile the brilliant author, then a young man, was quietly enjoying the excitement over a casual effort of his pen in which no head or hand but his own had been in any way concerned. Thus it was with other editorials in the

<sup>1</sup> Cf. POLITICAL SCIENCE QUARTERLY for March, 1893, p. 26 *et seq.*

*Union* which the opposition could pervert to its uses. If an official act, whether in foreign or domestic affairs, did not when made public tally perfectly with something previously said concerning the subject in that journal, the official who had done the act was condemned by the opposition newspapers for irresolution or vacillation or weakness.<sup>1</sup>

### III.

There is nothing that I have seen even tending to show that Douglas believed that the obliteration of the Missouri line would make Kansas a slave-labor state, or that he desired such an effect. It was the opinion of the president, in which opinion the secretary of war concurred, that owing to the climate and situation of Kansas the repeal would be futile to accomplish that result. The president said as much to Clemens of Alabama in a conversation which, more or less correctly reported, found its way into the newspapers of the day. Probably no one foresaw, when the repeal was under debate, such a conflict between Missouri and Massachusetts to control the politics of the territory as subsequently occurred. How could those who had the responsibility of framing a form of government for Kansas anticipate the disorder and violence which the repeal incited, to the prejudice of regularity in the territory? There was neither disorder nor violence in Nebraska. Kansas was, nevertheless, the theatre of events which produced commotion in Congress, and made issues in Northern elections. Aided greatly by the mysterious and sudden uprising of Know-Nothingism against the influence of the Roman Catholic Church, naturalized citizens and all immigrants, the Kansas issue defeated the choice at Washington of a Democratic

<sup>1</sup> Happily the article by Mr. Pryor in 1853 commended the government at St. Petersburg. Twenty years earlier the Russian *chargé d'affaires* at Washington had complained, in a note to the Department of State, of an article in the *Globe* expressing sentiments hostile to Russia, and the complaint gave the then secretary of state inconvenience because that journal was at that time really an "organ" of the administration. Such an incident, one would naturally say, should have been sufficient to put an end to official relations between editorials in a newspaper and the president.

Speaker in 1854-55, completed the destruction of the Whig Party, and sent to the Senate many members of the new Republican Party, who owed their election solely to the political and religious hurricane. After that hurricane had subsided, Buchanan and a Democratic House were chosen in the autumn of 1856.

The president appointed in succession three governors for Kansas — Reeder, Shannon and Geary. The first two were failures. The last was a brilliant success, and it is a fair inference that if Geary had been selected instead of Reeder, disorder would not in the beginning have reigned in the territory as it did. Perhaps one good choice in three is as much as any president has made, or can expect to make, in selecting public agents from a country so vast in extent as the United States even of that day.

Reeder was a Pennsylvania lawyer of good repute. He was commissioned within thirty days after the enactment of the Kansas law,<sup>1</sup> but dawdled so long in starting for his post of duty that he did not arrive till the following October. Marcy suggested Reeder's removal, so inexcusable seemed the delay in obeying the orders given to him. When he had arrived he so dawdled again that voting for members of the legislature did not take place till March, 1855, nor did the legislature assemble till the next July. There was for a year no law in Kansas. The fundamental law of the territory, enacted by Congress, commanded the governor to cause a census of the inhabitants and of the qualified voters to be taken by his duly appointed agents; to superintend by his agents the first election, and the returns thereof; to canvass the returns and declare the persons "duly elected." No one else could do that work. Certainly the president could not. If the governor failed to take a true census of the voters, to give proper oversight through competent officials to the voting, and out of fear, or for any other reason, adequately to canvass the returns and set aside elections in all districts where fraud or violence vitiated the results, the fault was his. Reeder did not report to Marcy the facts tending to

<sup>1</sup> The act was approved by the president May 30, 1854.

show the illegality of the first election, and take his advice. The president was uninformed till after the governor had issued certificates of election to a majority of the members of the territorial legislature. It was then too late for the president to contest the validity of what the governor had done. Having failed to annul all the returns in which systematic and wholesale frauds were palpable, the governor quarreled with the territorial legislature of his own creation, because, over his veto, the legislature removed itself from his town site, Pawnee,<sup>1</sup> to Shawnee. Reeder made the issue that simply because the legislature was in the wrong place it had no legal authority to enact laws; but the territorial supreme court decided that the removal was legal.

If Kansas was at this time in the hands of mere usurpers, it was Reeder who had put the government in their keeping. The situation inspired those in Kansas who felt aggrieved by such conduct to make a new departure, which became the turning point of subsequent violence in the territory and of heated debates in Congress.

In July, 1855, Marcy informed Reeder of his removal, and early in the next September, Shannon, once Governor of Ohio, was appointed to the vacant position. Meanwhile a portion of the people of the territory, having assembled in mass-meeting, at first and avowedly only to form a political party, summoned a convention at Topeka to transform the territory into a state. The convention met in October and framed a constitution which was duly ratified by the anti-slavery faction. Under its provisions, on January 5, 1856, a governor and other officers were elected. Reeder (who only five months before had brought into being the now repudiated legislature) was chosen a representative in Congress and Congress was petitioned to admit Kansas into the Union as a state. The House of Representatives, by a majority of two, voted for the admission, but the Senate refused to concur. The two houses were thus in a dead-lock over Kansas, and thereafter in that

<sup>1</sup> Marcy subsequently discovered that Pawnee existed only on paper, and that Reeder, with others, had been trying to "locate" the town within a military reservation—for connivance with which attempt an officer had been dismissed from the army by court martial.

territory two hostile governments stood confronting each other. Then the Massachusetts Emigrant Aid Company sent rifles into the arena. Reeder, having been received into the camp of the Topeka party, straightway began in Washington, and elsewhere, utterances in defamation of the president and secretary of state, which utterances have been adopted as truth by modern partisan historians. Having been indicted by a grand jury of the territory for acts of a treasonable character, and having in panic terror fled from Kansas disguised as a wood-chopper, Reeder was not, when he arrived at Washington, in a mental or moral condition likely to inspire perfectly impartial historians with unquestioning confidence in his statements before a Congressional committee, or elsewhere.

Meanwhile, during the fall of 1855, organized forcible resistance to the territorial law was developed. Southern organizations and Northern organizations, acting and reacting on one another, were endeavoring by outside intervention to control the political institutions of the inchoate state. Each side insisted that it was on the defensive. On December 11, 1855, Governor Shannon reported to Secretary Marcy that disturbances were imminent and that the territorial militia was unreliable because composed of partisans of both parties, and he asked for authority to call on the federal soldiers stationed in the territory. Some six weeks later Lane, representing the Topeka party, wrote to the president in the same sense, and three days after the date of Lane's petition for military aid of the governor, the president sent to Congress his special message of January 24, 1856, giving a history of the territory to that date. He made therein no discrimination between the groups of outsiders interfering to disturb the peace of the territory, but condemned the Topeka movement as revolutionary in aim, and as tending toward treasonable insurrection, if carried on to the end of organized forcible resistance to law. He declared his purpose to put into Kansas order and obedience to law, whether disorder and disobedience came from upholders of slave labor or from upholders of free labor. No lawyer

could affirm the illegality of the territorial government, or the legality of the Topeka uprising. On February 11, 1856, the president issued a public proclamation declaring that all the needed available military forces of the United States would be employed in Kansas to vindicate the laws. To Marcy and Davis was committed the execution of details.

All the instructions and orders issued, either from the State Department or the War Department, were subsequently transmitted by the president to Congress, or were published by the secretary of war in an appendix to his report of December, 1856. Although those instructions and orders have received no commendation from the historians, yet it may be safely said that they contain rules prescribing the relations of the military to the civil authority in times of public disturbance which are of great value for publicists.

The calamitous pre-eminence to which the abilities of Jefferson Davis raised him in the Senate and elsewhere after the inauguration of Buchanan, when the three-cornered academic debate raged between Buchanan, Douglas and Lincoln over the power of Congress in a territory, has inspired historians of the period from 1854 to 1857 to represent Davis as the pervading Satan of the administration. Now and then, when it suits their purposes, Cushing is associated with Davis in the diabolical rôle, but Marcy is either ignored or assigned to an inferior place, although he was the head of a department subject to a definite responsibility for what went on in Kansas. For the historians all omit to note the fact that, down to 1873, the execution of the laws of Congress for the political government of the territories was in the Department of State. Such matters of territorial government as had not been definitely assigned by statute to some other department, fell to the secretary of state as the successor of the secretary of the Continental Congress. In 1873 it was enacted that

the secretary of the interior shall hereafter exercise all the powers and perform all the duties in relation to the territories of the United States, that are now by law, or by custom, exercised and performed by the secretary of state.

But during the administration of Pierce, Marcy had much the same responsibility for the good conduct of affairs relating to Kansas as he had for that of foreign affairs.

The motive of the historians in attributing all responsibility to the Southern statesman is obvious. As von Holst is the pioneer historian, he is the chief offender. His successors follow his lead. The truth is that Davis was punctilious and careful to the last degree in avoiding interference with the work of a colleague, and so was Cushing. That abstinence practiced by each of the strong, self-reliant, willful members of that cabinet, and insisted on by the president, was what kept them in unexampled harmony to the end—a fact for which the historians offer no explanation. An illustration of the misconception in this matter can be seen on page 122 of Mr. Rhodes' second volume, where he says :

The president was undoubtedly in a strait between two ways, but by the 24th of January, the day on which he sent his special message to Congress, it was known that Jefferson Davis, who was an open friend of the Missouri party, had prevailed.

“Known” by whom? “Prevailed” in what, and against whom? The implication obviously intended is that Davis had “prevailed” against Marcy. But Marcy would never have remained in the cabinet a week after a colleague had manifested toward his matured opinions, in an important matter primarily committed by law to his management, such disregard as is implied in the comments of the historian, and had been sustained by the president.

In accordance with the president's proclamation of February 11, 1856, the secretary of war ordered Generals Sumner and Cook to use the forces under their command on a call by the governor. General Persifer F. Smith, an officer of conspicuous prudence and energy was, for the occasion, assigned to special command in Kansas. As if further to complicate the situation, the lower house of Congress (Republican) in the summer of 1856 attached to the Army Appropriation Bill an amendment forbidding the army to be used in enforcing law

in Kansas; the Senate (Democratic) refused to concur; Congress adjourned; the president reconvened Congress and the appropriation bill was passed without the amendment. The adjournment without appropriating money for the army aggravated the territorial disorder. Shannon resigned. Geary, who succeeded him on September 11, 1856, had been a faithful and competent soldier from Pennsylvania in Mexico. He was a man of conspicuous firmness, courage and self-reliance, perfectly familiar with army methods, and he had the confidence of army officers in Kansas. The result was that on September 30th, 1856, Geary had the happiness to report to Marcy:

Peace now reigns in Kansas. Confidence is gradually being restored. Citizens are returning to their claims. Men are resuming their ordinary pursuits and a general gladness pervades the entire community.

When Congress assembled in the following December, "freedom's battle" in Kansas had been fought and won.<sup>1</sup> The issues really surviving concerned only a struggle for party control of the new state, but the Lecompton Constitution was exploited in a way to disrupt the Democratic Party at Charleston, and the catastrophe went rushing on.

SIDNEY WEBSTER.

<sup>1</sup> Mr. Eli Thayer, a very competent witness, says in his instructive volume, *The Kansas Crusade* (p. 222): "At the end of 1856 I left Kansas work, and began the colonizing of Virginia; we had triumphed in the great conflict with such exuberance of strength that we had in Kansas four free-state men to every one of our opponents, while our numbers were rapidly increasing, and theirs constantly diminishing. Buford and his Southern soldiers had returned to Alabama. Other Southern battalions had retired to the Southern fields of their homes. Atchison and Stringfellow had given up the fight. It now remained for the free-state men of Kansas to restore order. . . . Mr. Lincoln and Mr. Douglas debated the question of slavery extension in 1858, but they were discussing an issue already dead, and of no importance to anybody excepting themselves. . . . Lincoln and Douglas might as well have debated whether or not it was desirable to prevent the recurrence of the Glacial Period."

Mr. Thayer's accurate language does not exclude from his own or the reader's view an appreciation of the adroit methods of Mr. Lincoln's ambition.



## THE INTRODUCTION OF THE CAUCUS INTO ENGLAND.

### I.

THE agitation for a further extension of the Parliamentary franchise, which began some years after the passage of the Reform Bill of 1832, triumphed at last in 1867. The Conservative Party itself, led by Disraeli, opened to the great city populations the gates of the fortress to which radicalism had laid siege. But the philosophical radicals, who by vindicating the rights of the autonomous individual had forged most of the weapons of attack, at once perceived that, with a wide extension of the suffrage, there was great danger that the individual would be overwhelmed by numbers. No one saw this more clearly than John Stuart Mill. Filled with concern for the future of the individual in a "democracy considered as the government of the numerical majority," the author of the essay *On Liberty* came at last to believe that in the plan of personal representation propounded by Thomas Hare he had found the means of averting the peril. This scheme of electoral reform, thought the illustrious philosopher, would free "the form of political institutions towards which the whole civilized world is manifestly and irresistibly tending, from the chief part of what seemed to qualify or render doubtful its ultimate benefits"—from the evil which consists in "giving to a numerical majority all power." Having become the indefatigable advocate of the plan of Hare, Mill laid it before Parliament in 1867, just as the debates on the Reform Bill were closing. But the amendment proposed by the philosopher was unfavorably received by the House of Commons. An amendment offered by Robert Lowe, the object of which was to introduce into the law the principle of proportional representation under a different form, met with no better fate. But when the bill was carried to the Lords

the question was taken up by Conservative members. The philosophical arguments of Mill concerning the peril to the individual involved in numbers produced little effect on the Tories, but, seeing themselves well nigh engulfed in the ocean of democracy, they felt that minority representation secured by law would furnish a plank that might keep them above water. Lord Cairns, who became the defender of proportional representation in the upper house, caused a clause to be inserted in the bill providing that in the twelve three-cornered constituencies the elector could vote for only two candidates, and in the city of London, which returned four members, for only three candidates. The remaining seat would then inevitably revert to the minority, if it amounted to a third, or in the case of London, to a fourth, of the electoral body.

When the bill came back to the Commons, the clause introduced by the Lords was vigorously attacked, especially by John Bright, who, since the previous discussion of the question in the House, had distinguished himself by the virulence of his opposition to proportional representation. He claimed that the question at issue was not at all one of granting representation to minorities, but of curbing democracy and so defrauding the people of the great cities of their representation. By guaranteeing a seat to the minority in advance, said he, the contest will be made a useless one for the majority, and public life will stagnate. But the opposition of Bright and of the many other members who supported him remained without effect. So desirous were the Commons to to get rid of the irritating question of electoral reform that they shrank from sending the bill back to the House of Lords. Therefore the clause proposed by Lord Cairns was permitted to remain, and thus the principle of minority representation obtained legal sanction. But the opposition which had been provoked did not cease. Bright was irreconcilable. With all the vehemence of which he was capable, he reopened the case before the electors. "Odious and infamous clause," "the most outrageous heresy for a popular representative system," — such were the terms used by Bright in describing the mi-

nority clause before the electors of Birmingham. That city was one of those in which the new system of voting would be applied. "Every Liberal in the United Kingdom," said Bright, "was asking himself: What is Birmingham going to do with the minority clause?"

Birmingham soon gave its answer. It created the Caucus, in order to fight the battle of democracy by means of a permanent organization of the Liberal Party.

## II.

Neither the Liberal nor the Conservative Party in England was wholly destitute of organization. Committees, clubs and associations of the one or the other party had been formed, since 1832, in many localities; but the chief concern of these had been to watch the registration of voters, to inspect in the interest of their party the registration lists prepared by the overseers of the poor, and to present before the revising barrister in the registration court objections against their opponents and claims on behalf of their party friends. The money necessary to carry on this work was furnished by the party chiefs and a few of their adherents. During elections these societies or clubs often furnished canvassers and members of election committees. But this form of organization as a whole was neither very compact, extended or permanent. Candidates for seats in Parliament offered themselves, or were nominated by the local party leaders or recommended by the party whip and his associates in London.

The democrats of Birmingham came to believe that, in order to overcome the effect of the clause concerning minority representation, they must develop in opposition to it a formidable organization. This they did not find in the old system of the Liberal Party. They did not believe that registration societies and Liberal associations—small combinations of subscribers, of amateurs, under the control of a few influential persons and traditional leaders—could reach the masses who, in consequence of the extension of the franchise, were entering on the political stage. In order to be successful the party

organization, thought the opponents of the minority clause, must reach all the voters, must make them feel that they are fighting *pro aris et focis*, and that the Liberal Party is the party for them and for every one of them. In response to suggestions of this kind, Mr. W. Harris, an architect and writer, who was one of the radical leaders, and secretary of the Liberal Association of Birmingham, proposed a plan of organization according to which all the Liberals of the place should meet in ward assemblies and choose committees, the members of which, coming directly from the people, could assume authoritative control of party affairs. In the first place a central committee of seventy delegates, which should be in constant communication with the citizens of the wards or districts, was to decide "to what objects the efforts of the party will be directed from time to time." But, for the solution of important questions and particularly for the selection of candidates, even this committee, notwithstanding its origin, would not have sufficient authority. Such authority could be found only in a more popular body—"a body which should not only be a reflex of popular opinion, but should be so manifestly a reflex of that opinion that none could doubt it." In order to form such a body the Liberals of the wards were to choose additional delegates who, joined to the seventy members of the central committee, should form a general committee of 400 members. These 400, "elected openly and freely by the burgesses, without dictation or suggestion from the central body or anybody else," should nominate the candidates, "and gentlemen aspiring to the honorable position of representing Birmingham must abide by the vote of the selecting body, and the Liberal electors must do so."<sup>1</sup>

After this plan had been explained and defended in meetings held in all parts of the city, it was adopted. A Liberal committee was formed in accordance with its provisions, and, in view of the impending general election of 1868, this body named the candidates for the three seats. But as each elector could vote for only two candidates, the committee

<sup>1</sup> Birmingham Daily Post, Dec. 21, 1867.

assigned to each ward two names, the combinations being so arranged that two of the three could receive, out of all the votes cast in the city, only the number strictly necessary to secure them the majority, while the remaining votes would go to the third candidate. By a preliminary canvass the central committee had ascertained precisely the number of Liberal electors in each ward and the least number of votes necessary for a majority at the poll, and it had then distributed the three candidates among the wards by twos. One ward should vote for A and B, another for A and C, a third for B and C, a fourth for A and B, *etc.* The voter who resigned to the committee the designation of the three candidates was also to renounce the privilege of selecting from among them the two he preferred. "Vote as you are told," was the watchword. Triumph of the democracy over its foes must be bought at this price. Each voter was given a ticket with the two names upon it which he must declare at the polls. Some malicious Conservatives conceived the plan of distributing counterfeit tickets, in which the Liberal names were differently distributed among the wards. If any number of electors had voted for the candidates named on the counterfeit tickets, the game which the Liberal committee was playing would have been thrown into utter confusion. The fraud was discovered in time, and the only result was a stronger disposition in the Liberal camp to vote blindly according to orders. Still the enthusiasm was not universal. A group of workingmen, not numerous or influential, distrusted the champions of the "vote as you are told" democracy. Some radicals of the old stamp, survivors of the "glorious days" of 1831-32, who had fought for the extension of the suffrage, saw with grief that it was to be exercised not by freemen but by automatons.<sup>1</sup> But the immense majority

<sup>1</sup> One who had been a friend and companion of Atwood in the Birmingham Political Union of 1831 wrote: "You must vote as you are told! We who have flattered and petted you when you had no vote — stating over and over again our entire confidence in your ability rightly to use it — now cannot trust you! I say it is an insult, and the securing of any end, no matter how desirable, will not justify it. I, even, the bosom friend of Atwood, have had this degrading proposition put to me." — *Birmingham Daily Gazette*, Oct. 27, 1868.

of the electors "voted as they were told," and the three Liberal candidates were returned in spite of the clause adopted for the benefit of minorities.

The enemies of democracy and the "philosophers" who had introduced the limited vote were not willing to profit by the lesson which Birmingham had given them, and at the earliest opportunity they gave a new application to the principle of the representation of minorities. The law of 1870 concerning primary education, which placed the supervision of schools supported by the rate-payers in the hands of elected boards, provided that the elections should be by cumulative vote. This was accomplished by a provision that the elector, instead of voting for as many different persons as there were members of the board (from five to fifteen, according to locality), could cast all his votes for a single candidate; the result being that a small group of electors, by concentrating their votes on a single person, could elect him and thus make their influence felt in the face of a dominant majority. The Birmingham radicals began a new campaign to nullify the cumulative vote, as they had already nullified the limited vote. But their appetite was too great, for they desired to secure the entire fifteen seats on the school board; and, on account of the greater complexity of the problem, the skilful distribution of votes among the candidates did not succeed this time. Instead of capturing the entire board, the radicals found themselves in the minority.

The prestige of the Liberal Association was injured, and its organization began to dissolve. But it was soon to form again with new strength and enter upon a career at once brilliant and fraught with weighty consequences for the political life of the entire country. The change began in 1873. In that year two men appeared on the political stage in Birmingham, who, though differing greatly in their worth, their ambitions and their talents, and destined to careers sufficiently unlike, have contributed more than any other men to transform the character of political life outside of Parliament. The one was Mr. Schnadhorst, the new secretary of the Liberal Association;

the other was Mr. Joseph Chamberlain, who became the moving spirit of that organization. Elected mayor of Birmingham in 1873, Mr. Chamberlain was the most brilliant representative of a group of remarkable men whom chance had thrown together. Intelligent, active, having already made their fortunes though still young, they wished to display their talents in public life. A field of activity lay open before them in this very city, for it awaited the hand of political workers, as did most of the great manufacturing centers which had developed with extreme rapidity in the north of England. Massive structures of brick, whose tall chimneys poured forth clouds of smoke from morning till night, told of the life of vast masses of men, absorbed in the work of production, practically excluded from intellectual and artistic pursuits, indifferent even to external conditions of comfort in their cities, to the pavements of their streets, the breadth of their highways, the healthfulness of their dwellings. A quarter of a century ago Birmingham presented a spectacle no more attractive than this. Impressed by this fact, some of its citizens conceived the desire to work for the improvement of the city. They were the men who were grouped about Mr. Joseph Chamberlain. They wanted to get control of the municipal council, and in their campaigns for this purpose they took as their base of operations the Liberal Association.

Surely the task which Mr. Chamberlain and his friends undertook and to which they devoted their energies had nothing to do with national politics ; it was worthy of the support of all citizens without regard to party. But the Conservatives unwisely furnished the radicals with a pretext for making the improvement of local administration a party question. Having been deprived, through the system of "voting as you are told," of the share of Parliamentary representation to which by the minority clause they were entitled, the Conservatives now wished to force an entrance into the political fortress of Birmingham by means of municipal elections. With this end in view they undertook a political contest, and lost. Had they been willing after that to revert to the old method of fighting

local elections on non-party lines, it was too late to do so. At this time the unity of political sentiment which bound Mr. Chamberlain and his friends together had become too strong to disappear on the morrow of the victory. They were advanced radicals, but there was nothing speculative or doctrinaire in their radicalism. For the most part they were business men who had not read very widely. To be sure there were among them some men of culture, but these were little inclined to philosophic doubt. The pictures of the Athenian democracy which Grote had painted filled them with an enthusiasm which left no place for compromise. They did not understand the scruples which led men like J. S. Mill to seek to counterbalance the influence of democracy. To them if democratic government was good, it was so without limitation, without reserve. Outside the little group of leaders, they cared still less about defining what should be included within or excluded from party politics. In their minds ideals and means of attaining them lay confused in a vague sort of vision behind the catch-word "improvement," which they applied to the state as well as to sewers. Amelioration, improvement, progress, liberalism were so many notes which on their lips blended into a single chord.

After they had secured control of the city government, Mr. Chamberlain and his friends undertook an elaborate system of public works, the object of which was to increase the beauty and healthfulness of Birmingham. Their proceedings resembled those of Haussmann, the celebrated prefect of Paris under Napoleon III. The new municipality of Birmingham opened and graded streets; swept away the wretched buildings that disfigured the centre of the city, and erected magnificent edifices; provided a system of sewers, of sanitation, inspection and of pavement for the streets; built public libraries, baths, hospitals, squares; made the city proprietors of the gas and water works. The cost of this transformation was large, but its results were beneficial.

In the prosecution of this work Mr. Chamberlain and his friends were supported in the town council by a compact and



faithful majority. This was secured through the organization of the Liberal Party, which had been brought to a high degree of perfection by the efforts of Mr. Schnadhorst, a born organizer and a master of the art of wire-pulling. The Liberal Association, of which he was the leader, seized control of the electoral body of Birmingham, and seized it in such a way as to keep it. Every inhabitant of the city, whether voter or not, was admitted to membership in the association. The payment of an assessment was not always demanded. The lowest sum fixed for this was one shilling, but if the individual "signified his adhesion to the objects and to the organization of the association," he was not to be required to pay the fee. The members of the association in each ward chose in public meeting a committee consisting of as many individuals as they desired. The members of the ward committees thus chosen could add to their number as many colleagues as they wished. In addition to the ward committees, provision was made for an executive committee of the entire city, to consist of the chairmen and secretaries of the wards as *ex officio* members, together with three delegates chosen *ad hoc* in public meetings of the wards; that is to say, each ward was represented on the executive committee by five delegates, making for the sixteen wards of the city of Birmingham eighty members. This committee had also the right to increase its membership by the addition of thirty persons. Besides the executive branch, the organization had a deliberative assembly, the general committee, which consisted of all the members of the executive committee ( $80 + 30$ ) together with thirty members chosen *ad hoc* in public meetings of the wards ( $30 \times 16 = 480$ ). Finally, the four officers of the general committee (president, vice-president, treasurer, secretary), together with seven members appointed by the executive committee, formed a "management sub-committee." This combination of 594 persons became popularly known under the name of "the six hundred." In them the democracy of Birmingham, which was hereafter to govern itself, was supposed to be embodied. It was said that the control of the Liberal Party had been placed in their hands because the party had

confidence in the people. But in fact that confidence was so unbounded as the leaders wished the public to believe. The skilfully arranged constitution of the association contained certain safeguards against "the people." Its governing bodies were not directly constituted by the people. The "six hundred" named only four of the eleven members on the committee of management, while the other two-thirds were appointed by the executive committee, a body whose members were chosen in part by coöptation. Thirty of the members of the executive committee, as we have seen, were chosen by the eighty elected members, and of these last two-fifths received their nomination in ward committees, on which served an unlimited number of persons selected by coöptation. If, indeed, the ward assemblies which formed the basis of the organization had habitually chosen savagely independent delegates, efforts to control their action from above would of course have been futile. The skill of the leaders was shown precisely in this, that they made themselves masters of the ward meetings and then caused delegates to be elected whom they could frustrate. Besides bringing influences of every kind to bear for this purpose, the association introduced certain special devices. One of these was the employment of "travelling companies" which went from ward to ward to attend public meetings where delegates were to be chosen, and by their influence and voices insured the election of certain candidates. This manœuvre was facilitated by the fact that ward elections did not take place simultaneously, but were distributed over a period of four, five and even six weeks.<sup>1</sup> In the net result the "six hundred" consisted of men devoted to Mr. Chamberlain and his friends, who, it was well understood, were to have seats on the management committee.

Still it is true that the spirit shown by the leaders of the association was not low or vulgar. They did not make it purely an instrument of personal domination. They inspired the association with a real and even an intense life. The

<sup>1</sup> In 1885 the Liberal organization felt itself strong enough to abandon this method of choosing delegates.

best men of the Liberal Party entered it, accepted elections to the "six hundred," put themselves in touch with the masses at public meetings and through personal conferences upon questions of general interest, and thus promoted an active public spirit. It is true that of all the great manufacturing cities Birmingham possessed conditions the most favorable for the establishment of such relations. Thanks to the special character of its industrial life, Birmingham did not exhibit in clear contrast and opposition the immense fortunes of employers and the misery of a manufacturing proletariat; it did not have the "two nations" spoken of in Disraeli's *Sybil*. This fact, peculiar to this manufacturing center, early impressed observers. Léon Faucher, who visited the country during the anti-corn law agitation, remarked that Birmingham was

an industrial democracy within a vast city, this being true even in the workshops where steam is the motive power. While in Great Britain fortunes tend to concentrate, in Birmingham they are distributed more and more. Industry in this city, like agriculture in France, is subdivided among many small enterprises. Few large fortunes are found and scarcely any great establishments. This form of industrial organization is connected with the nature of the occupations pursued. At Birmingham labor is wholly manual. Machines are used as aids in manufacturing, but everything depends on the skill and intelligence of the workman.<sup>1</sup>

Though the condition of things had more or less changed during the quarter of a century that had passed since the abolition of the corn laws, the gradation of industrial society in Birmingham was still a gentle one. Owing to this, the leaders were able to reach the masses independently of the ways provided in the statutes of the Liberal Association. Its regular meetings merely furnished opportunities for bringing together larger numbers of citizens, and they were not neglected. In this Mr. Chamberlain set the example. To the meetings of the "six hundred" and other assemblies he brought a method of speaking which since that time, and on a larger stage, has placed him in the first rank of debaters. His

<sup>1</sup> Études sur l'Angleterre, I, 502, 503 (Paris, 1856).

speech was incisive, clear, and informed by a rigorous logic which went straight to the heart of the subject, and which, though the matter under discussion was of the driest and most complicated nature, opened wide vistas, as does the axe of the pioneer among the tangled branches of the virgin forest. At these meetings questions of interest to the city were discussed and often plans and measures which were to be submitted to the town council were explained. These discussions contributed to the political education of the citizens. The simple fact that the leaders were willing to debate such subjects before them was appreciated as a mark of confidence on the part of superiors. "They have taken the people into their confidence," it was said.

The group of men who were associated under the lead of Mr. Chamberlain, and who thus contributed their personal services and contributed money as well, and with equal readiness. Their names always appeared at the head of subscription lists and for considerable sums. Every public spirited effort was assured in advance of their sympathy and attention. Thus they furnished a brilliant proof of the fact that social leadership such as had been the glory of old England, could still be exercised for the public good by others than landlords and without the spirit of paternal condescension characteristic of an aristocracy.

But as Mr. Chamberlain and his friends operated under the firm-name of the Liberal Association, the legitimate and well-deserved influence which they gained accrued to it. Since the persons who worked through the association were leaders in every public enterprise, whether in the municipal council or elsewhere, the minds of people at large naturally became confused. Everything seemed to converge toward the association and its organs; recourse was had to them on all occasions, and their intervention was called for in matters great and small. Mr. Chamberlain and his friends did nothing to correct the error, but on the contrary countenanced the idea that the association was the necessary source and instrument of public happiness.

This association was the "Liberal" Association. In order to share in its work in the municipality, it was necessary to profess its political creed and partake of the Liberal communion. As far as the political life of Birmingham was concerned, the Conservatives were consequently put under the ban. At the annual municipal elections the Liberal Association waged implacable war upon them. The Liberal majority had become overwhelming ; they finally obtained almost all of the seats in the council ; but their animosity toward the Conservatives did not cease. The latter had been driven from all positions in the local government, and from all representative bodies, however slight their connection with politics, — even from the control of charitable and educational institutions. The malice and hate shown by the Liberals on these occasions provoked great exasperation among the Conservatives. The success which attended the schemes of municipal improvement only increased their irritation. There was a feast in the house and they were shut out, as if they were not children of the same family. They recognized the great administrative talent exhibited<sup>1</sup> by Mr. Chamberlain and his friends ; they could not charge them with irregularities in the use of the public funds ; but they thought that the municipal business could not but profit by the honest criticism of a Conservative minority in the town council. The Liberals of the association did not desire this and tried to exclude the Conservatives altogether. Of course they disclaimed personal responsibility for the result: the fact was that the electoral body preferred Liberals to Conservatives ; and why should Liberals be expected to support Conservative candidates ? Moreover, they said, the work of transforming the city could have been accomplished only by municipal authorities sure of an overwhelming majority and without fear of seeing their vast plans thwarted by petty cliques.<sup>2</sup>

<sup>1</sup> "Scarcely once in a half-century is an administrator like him born," — such was the characterization of Mr. J. Chamberlain given once by one of the leaders of Tory opinion in Birmingham.

<sup>2</sup> Possibly the fear of this was exaggerated, for Mr. Chamberlain himself has admitted that the great things accomplished by the municipality were done "with

The truth is that the overwhelming majorities at municipal elections were necessary to the leaders of the association for a further purpose — for their effect on the Parliamentary elections. The municipal elections were intended by the chiefs to serve as a political stepping stone. The conversion of the Conservative fellow citizens to their plans of municipal reform would have only half satisfied them. The general good feeling which would have followed would have proportionately lessened the ardor of the contest for the Parliamentary seats, all of which the Liberals intended to keep. Proclaiming the Conservatives to be always and everywhere "the enemy," they let loose the populace against them and permitted the employment of rather rough methods. Bands of members of the Liberal Association forced their way into Conservative meetings and raised an uproar. This was done with such regularity that it became necessary for the Conservatives to give up public meetings in Birmingham. The offenders received no formal orders from the Liberal Association, but it took steps for their arrest, and therefore it came to be regarded as an accomplice, if not the instigator of the acts of disorder, which its adversaries were the victims. The Conservatives on their turn identified the interests of the Liberal Party with the interests of Birmingham, and came to regard the latter with almost the indifference of strangers. Their feeling toward the Liberals was one of bitterness and rancor. After a lapse of years, by the irony of fate old enemies became allies (in consequence of the Unionist coalition against the Gladstonians), but among the Conservatives the wounds continued to smart as they did on the day they were received.

The association performed well the services which the Liberals expected from it. Its candidates carried the Parliamentary elections with a high hand. Mr. Chamberlain himself was nominated in 1876. The discipline of the electoral body was perfect. "The forces at the disposal of the Liberal Association

the hearty approval of the bulk of the inhabitants, including not a few of the Conservatives themselves." — "The Caucus," by J. Chamberlain, M.P., *nightly Review*, Nov. 1878.

ciation," as its chiefs declared with satisfaction, "were not hordes of wayward free lances—they were armies of disciplined men, well accustomed to stand side by side and to move in unbroken battalions." But it did not seem right that Birmingham should be the only place to profit by the use of this highly perfected instrument. Its advantages ought to be extended to the entire country, for the more complete triumph of the Liberal cause. For this purpose a propagandist campaign was opened by the Birmingham men. Their association was held up as the model to be imitated. The results which had been obtained with its aid spoke for themselves, and with convincing eloquence. That body had "succeeded in rendering municipal and political life a consistent, earnest, true and enthusiastic life among the vast population in which it labours, instead of a spasmodic electioneering impulse." "By this extension of the idea of Liberalism"—*i.e.* by the introduction of partisan politics into local elections—"the association connected itself with the development of the general life of the town." There was not any other "town in which democracy has been so largely interpreted as *the life of the people as an organized whole*, and to the 'Liberal Association' the acceptance of this interpretation is chiefly due."

The width of the base on which the organization rests has deprived sectional interests of their importance and influence, [and] the faithfulness of the members of the association to each other has been strikingly shown. . . This faithful loyalty has been secured by the importance of the issues covered by the action of the association, the openness and frankness of its proceedings, the absence of sectional distinctions in its operations, the confidence it reposes in its members, and the fidelity with which its officers execute the decisions of the majority. The system cannot co-exist with the subtle social scheming and elaborate methods of wire-pulling in vogue in so many towns. The very breath of its life is its trust in the people at large.

The association has won an "almost unprecedented series of electioneering victories," but party triumphs are not its only record.



The "Liberal Association" . . . is an agency through which who believe in the possibility of a higher state of civilization now exists—who have faith in realizable ideals—have attended and are attempting to carry out clear and definite plans for culture, happiness and prosperity of the community.<sup>1</sup>

Mr. Chamberlain and Mr. Schnadhorst in particular visited in succession the leading cities of the kingdom in order to promote the "Birmingham plan." After holding little private gatherings of the most influential (or most pushing) men of the place, they expounded the plan in public meetings. The agitation was carried on with much activity. Besides eminent members of the association it sent out agents to work more leisurely without making known their errand. The association had a little corps of workers recruited from a class sufficiently numerous in all great cities—persons who dislike the routine of regular work and who prefer a haphazard existence, or persons whose misfortune has driven from ordinary pursuits. These workers were not numerous, scarcely twenty in all, and they were very well paid. They all had glib tongues, could tell stories, some of them could use their pens, knew how to turn a "letter to the editor," or, if need be, even to write a pamphlet. They worked now in Birmingham, now in other cities, always, of course, *incognito*.

Conditions were favorable for the Birmingham propaganda. The secret ballot, introduced in 1872, shortly after a considerable increase of the number of electors who were left free on election day to their own inspirations, made the management of elections, without previous arrangements and a more or less compact organization, very difficult. The defeat sustained by the Liberals in the general election of 1874 had brought to the Commons for the first time since 1832 an immense Conservative majority. The Liberals, who thought they had a perpetual lease of the country, could hardly recover from the surprise; and, as usually happens in the case of defeat,

<sup>1</sup> The Liberal Association—"the 600"—of Birmingham, by H. Crosskey (one of the leading members of the association). Reprinted from *Macmillan's Magazine*, Feb. 1877.



parties, they looked about them for the cause of the catastrophe they had suffered at the polls and found it principally in the fact that they were poorly organized. It was claimed that the "Birmingham plan" would correct this in the best possible way. The defeated candidates especially interested themselves in it. They accepted it with something of the artless faith of gamblers who allow themselves to be caught by "an infallible method of winning" at *rouge et noir*. They did not take into account the exceptional condition of affairs in Birmingham, nor the strength of Mr. Chamberlain's leadership there; they thought that the secret lay wholly in the association patented at Birmingham. In many cities, accordingly, they made haste to establish, in imitation of Birmingham, "hundreds," "three hundreds," "four hundreds," etc. The essential features of the new organizations were the character of the foundation on which they rested and the extent of the sphere of their action. Being strictly representative, they were to bring into play the power of the masses, down to the lowest social strata. "Extending Liberalism" by conducting local elections on party lines, they brought into the sphere of Liberal action all the problems and questions in which the community was interested.

### III.

Impressed with the importance of their rôle, the "hundreds" seized the first occasion to play it: This was furnished by foreign politics. The Eastern Question, brought to the front by the insurrection in Herzegovina, was occupying the attention of Europe and especially of England. The government of Disraeli, following the traditional English policy, inclined toward Turkey and against Russia, which had taken up the cause of its oppressed Slavic co-religionists. The news of the Bulgarian atrocities raised in England a loud cry of horror, and vehement protestations against Turkish barbarity resounded from one end of the country to the other. The new Liberal organizations hastened to make themselves the active instruments of this agitation, and at the same time

to direct it against their opponents in office. They accused the Conservative government of moral complicity with the Turks. The chiefs of the Liberal opposition in the Commons, who according to the rules of the game should lead the assault upon the rival party, were more guarded in their attacks on the government. Whether it was because they were patriotic enough to believe that foreign affairs were a proper domain within which to exhibit the habitual animosity of parties, or because their feeling of responsibility as statesmen, perhaps exaggerated, or even their more cautious temperament prevented them from plunging into a decisive contest, they at all events held back. But the enthusiasts and agitators outside of Parliament only became the more excited. "hundreds" were indefatigable in organizing anti-Turk meetings and in voting resolutions hostile to the ministry. The Birmingham association encouraged and even instigated them. Following its suggestion, the other associations called more than 150 "indignation meetings" to be held in the course of a few days. It was also at its suggestion that delegates from several associations met at Sheffield and Birmingham to adopt measures for the holding of a national convention to discuss the Eastern Question. The convention was not held, but there was a monster meeting in London which was attended by numerous delegates from the provinces.

The unanimity with which the Liberal associations threw themselves into this movement furnished a suggestion of what they might accomplish if they were permanently united and obeyed a single impulse. Ideas of this sort were germinating in the minds of the Birmingham leaders, who had already on one or two occasions promoted collective action on the part of the associations. Since the "plan" had been adopted by a sufficient number of localities, Mr. Schnadhorst believed the time had come to establish a permanent connection between the local associations and secure unity of action by means of a central organization. A circular from the Birmingham association invited all the Liberal organizations formed on

representative basis to send delegates for the purpose of discussing a plan of federation, which should be established "in order to facilitate the public discussion of political questions, and to more effectually promote the adoption of Liberal principles in the government of the country." Nearly a hundred associations responded, and on the 31st of May, 1877, the conference began at Birmingham under the presidency of Mr. Joseph Chamberlain. In an able speech which opened the debates he defended the new organization on grounds of utility and necessity, and showed how it would open a new chapter, even a new era in the history of English Liberalism by introducing a new basis and new methods of action, in harmony with the new political conditions. In many districts, he said, workingmen now form the great majority of the electoral body, and it becomes absolutely necessary that the candidates and policy of the party should be acceptable to them, and that they should participate in the discussions by which these candidates are selected and this policy is settled. This is recognized in the new constitution of the Liberal Association of Birmingham, according to which every Liberal in the town is *ipso facto* a member, and that by virtue of his Liberalism without any other qualification. The voice of the poorest counts for as much as that of the richest. It is an association based on universal suffrage. "I need not dwell," remarked Mr. Chamberlain, "on the success which has attended our efforts. We have secured the control of the representation and the government of the town for the Liberal Party, and we have used it to carry out the great end of Liberalism—to promote the greatest happiness of the greatest number." There have been obstacles and difficulties to overcome, due in part to Liberals themselves, "to some who have been ignorant of what are the first elements of Liberalism, and whose lingering distrust of the good sense and the patriotism of the people has found expression in machinery—cumulative vote, minority representation, and I know not what of the same kind—which tends to divide the party of action in face of the ever united party of obstruction." Now, continued Mr. Chamberlain, it only

remains to carry on the formation of local associations on a representative basis, and when these shall all be united by a central organization, representative in its turn of these associations, we shall have a national convention "to promote the objects, a really Liberal Parliament outside the Imperial Parliament, and, unlike it, elected by a universal suffrage and with some regard to a fair distribution of political power." The task will be less to establish a new Liberal creed than to make Liberal policy more definite and Liberal action more decisive. In order to put the demands of Liberalism into the immediate policy of the party, one of two things is necessary: either the leaders determine this policy, or, failing this, that the party and file choose for itself the next point of attack. Up to the present time the first method has been followed, but now it is necessary to have recourse to the second; the time has come to submit to popular initiative. Do not the events of recent years clearly demonstrate this? While our official leaders have been waiting or have been divided, public opinion has been solidifying and crystallizing, and soon it will appear that the only persons who do not know where we are going are those who have undertaken to guide us. The object and aim of the new organization will be to give expression and strength to opinion, and to secure for it greater attention than it has hitherto enjoyed. More united than their leaders and having a perfectly clear conception of the necessary constitutional changes, the Liberals of the country can obtain them "by a little gentle pressure which concerted action may enable them to bring to bear."

The two main points of this speech—the right of the people "to a direct initiative in the choice of men and measures, and the rejection of the traditional leaders"—were emphasized still more in the ardent and aggressive harangue of the next speaker, Mr. W. Harris, the author of the "Birmingham plan." The leaders, he declared, refused to recognize the changes which had come about in political organization and the distribution of political power and its distribution. But did not experience prove that a constitutional right could not be disregarded

impunity? If this right were denied normal expression, the result would be that it would force its way to recognition in an irregular and perhaps almost violent manner. Such a condition of things already existed to a certain degree in the Liberal Party. The extension of the electoral franchise to the masses in the towns had bestowed on the people the power to control Parliamentary representation, while the direction of party policy, the determination of measures to be submitted to Parliament, the choice of questions to be agitated by the people were still confined to those who had hitherto managed the Liberal Party. It was no longer possible to maintain the old system; it was no longer possible for the leaders in London to draw bills of exchange on the people in the country, payable say two months after date in agitation for a particular purpose. The people themselves ought to decide what and when to agitate. The people had just shown what they could do by forcing the government, over the heads of the official leaders of the Liberal party, to halt in its nefarious and scandalous philo-Turkish policy. But if on each political question a special agitation were to be raised, what an enormous loss of energy, time and power would result. Instead of having an Education League to promote national education, a Reform Union to secure Parliamentary reform, a Liberation Society to work for religious equality, would it not be better in place of all these organizations, to form once for all a Federation which, by focalizing the opinions of the majority of the population in the great centers of political activity, could speak on any question which might be raised with the entire authority of the voice of the nation? The organization which the speaker and his friends proposed would furnish precisely this instrument. The solid basis on which all their efforts rested was absolute and entire confidence in the people. They cherished no mental reservations; they asked for the voice of the people, and they desired to serve its cause; and they were sure that perfect confidence was compatible with perfect party discipline and united action, as the experience of Birmingham had proved.

Such, as explained by the foremost authors of the plan, the spirit, character and aim of the projected Federation, was evident at the first glance that they raised questions of exceptional importance. Whatever the influence which the organization might exert on the destinies of the historic Liberal Party, on the distribution of power within English political society, and in general on the political life of the country, it was clear that the plan assailed the established constitutional order. It aimed to establish the general rule that candidates for election to Parliament should be designated by all inhabitants who asserted their membership in a party, whether they were legally entitled to the suffrage or not. This was equivalent to saying that in spite of the constitution the members of Parliament were to be chosen by universal suffrage, that without any precise limitation as to age. The basis of the constitution would thus be changed in an extra-legal manner. The organization of delegates chosen by this sort of universal suffrage in a convention—or, to use Mr. Chamberlain's phrase, in a "Parliament outside the Imperial Legislature"—would create a national power other than that established by the constitution. How would the constitution work under these conditions? Should the members of the House of Commons obey the will of their legal, or of their *de facto* electors? Should the government be guided by directions proceeding from the Parliament established by the constitution, or by the will of the extra-constitutional Parliament? If, as the authors of the plan of the Federation insisted, the extra-constitutional Parliament should determine not only the national policy to be followed, but the order in which problems raised should be taken up for solution by the legislative body, what would be the function of this latter body? Which of the two would possess the power, and where would responsibility rest? Would power and responsibility be united or separate? For good or for evil, the new extra-constitutional organization meant profound changes in the working of the English governmental system.

It also meant the adoption of new political methods.

the minds of the promoters of the Federation the dispute between the people and the traditional leaders turned on the right of agitation. The great questions were: when to agitate, what to agitate, who shall initiate agitation, and who direct it? Agitation and the exercise of political power seemed to them equivalent terms. The agitation business was therefore to be farmed out to a national company and agitation to be raised to the rank of an *instrumentum regni*. Public opinion was no longer to rouse itself at irregular intervals, as silently germinating problems forced their way to the surface of political life: it was to be thrown into continuous agitation, as in the Scandinavian Walhalla, where the heroes spend all their time in fighting. The prospective conflicts were not to be limited to the attainment of certain objects; there was to be no formal programme which would "narrow Liberalism by a stereotyped creed." Only one thing was to be agreed upon, and that was to fight, to furnish an army—an obligation, it was hinted, which should be assumed with the less hesitation because by the terms of enlistment the soldiers themselves were to point out the enemy, choose the generals and dictate the plan of campaign. But if with all this "perfect discipline" was to be maintained in the army, must not the authority of the soldiers be a delusion and a snare?

In the conference there was very little serious discussion. The delegates who appeared had received no draft of the plan of Federation nor any statement of its objects until the morning of the day on which the conference met. They had brought no instructions from the associations which appointed them, nor could they well have done so, for the circular of invitation which the Birmingham association sent out was drawn in terms so general that it explained nothing and pledged to nothing. The promoters of the Federation, who exhibited such energy in proclaiming the duty and necessity of consulting the rank and file about all party affairs and of carefully collecting their opinions before starting an agitation, had neglected an excellent opportunity to put their



precepts into practice. As soon, however, as the plan had been duly explained and commented on, a part of the delegates declared that it inspired them with feelings of unbounded admiration, and that its authors were preaching to convert. They added their "testimonies," like those who take part in religious meetings, and, with emphatic affirmations, tell us that they found salvation by believing. In the same fashion the delegates testified before the conference how they had won conversions, "simply by trusting in the people." Thus one delegate had opposed to him numberless obstacles, all the forces of darkness —

a lord lieutenant whose land surrounded the place for miles; there was magisterial influence, aristocratic influence, legal influence, and nearly all influences against him [the speaker]; but it was simply by trusting to the people that he was successful. . . . And with a farthing of any legal expense, simply by throwing himself among the people, they not only secured the seat, but they secured a majority of nearly 100 votes. He was only telling them that in order that they might never be disheartened in fighting for Liberty if they trusted to the people. In nine cases out of ten the people were right, and they would not trust in the people in vain.

Not all the speeches at the conference, however, were spoken in this enthusiastic key. The remark was made that the voice of the people was not always the voice of God, but that nine times out of ten it was safe to trust the people. Several of the important reservations were formulated during the debate rather in the course of the statements made by the delegates. Some, while accepting fully the plan of the Federation, expressed an apprehension that it might trench on the independence of the local associations. The legitimate anxiety which this question inspired was mingled, in the minds of many delegates, with a little local jealousy of Birmingham, because it was putting itself at the head of the column. The "statement of the proposed constitution and objects of the National Federation" met all these apprehensions by declaring in the clearest terms that "no interference with the local independence of the Federated Associations is



posed or contemplated." Several delegates took note of this declaration and laid great stress upon it. One said, by way of example, that his constituents did not intend to have imposed upon them the practice in vogue in Birmingham of making all local elections political contests. The question of admitting to associations persons who did not pay assessments gave rise also to an exchange of ideas. One delegate demanded that in conformity to the principle of consulting the people, which had been invoked at this very conference, the project should be submitted for preliminary consideration to the local associations invited to join the Federation. But the authors of these suggestions were not allowed to dwell on them, and their proposals were summarily tabled. Still, a discussion arose concerning that point in the draft which defined the composition of the council of the Federation. According to the preliminary statement, it was to consist of delegates from the local associations varying in number according to population. Places with more than 100,000 inhabitants should have twenty delegates; those with more than 50,000 inhabitants, ten; and, finally, towns or districts which had less than 50,000 should invariably send five delegates. An amendment proposed in the conference provided that the number of delegates should be proportional to population, on the basis of one representative to every five or ten thousand inhabitants. There was something more behind this different method of computation than the mere desire for arithmetical symmetry. If representation in the council were strictly proportional, the great cities, rivals of Birmingham, would have a much larger number of votes, while the plan as presented favored at their expense the small towns, which would more easily fall under the influence of Birmingham. And as, moreover, representatives of towns remote from Birmingham could not easily attend meetings of the council, it would generally be made up of delegates of numerous small towns in the neighborhood of Birmingham and more or less under Birmingham's influence; so that the leaders of the association of that city would be likely to assume control of the National

Federation. At last the opposition yielded before the protests of the friends of the scheme as proposed. They reminded that at the next annual conference the statutes could be changed, if experience should prove it necessary, and meanwhile they would be simply trying an experiment for a year. Thus the draft was adopted without change, and the "National Federation of Liberal Associations," since commonly known under the name of the National Liberal Federation, was founded. According to the statutes its object was to assist in the organization throughout the country of Liberal associations based on popular representation, and to promote the adoption of Liberal principles in the government of the country. The government of the Federation was vested in a Council, formed in the manner indicated, and a General Committee consisting of a smaller number of delegates, together with twenty-five members added by itself. Intrusted in general with the furtherance of the "objects" of the Federation, the committee was specially charged "to submit to the Federation Associations political questions and measures upon which universal action may be considered desirable."

The formalities connected with the founding of the Federation were completed. But this performance was really only a "curtain-raiser." The principal play was to be given that evening, as had been carefully announced in the circular which summoned the delegates to Birmingham. It was a public meeting with Mr. Gladstone as principal speaker. The illustrious statesman came in person that he might present the Federation at the baptismal font. This act of sponsorship derived a peculiar importance from the exceptional position which Mr. Gladstone then occupied.

Soon after the defeat of the Liberal Party in the election of 1874, Mr. Gladstone abandoned its leadership, having decided to bring his long political career to a close and to employ the rest of his days in preparing for that supreme moment when he would have to appear before his Eternal Judge. Mr. Hartington was appointed his successor and formally assumed the reins of government within the Liberal Party. But

the rigid organization of Parliamentary parties as they exist in England, directed by a single leader toward whom all eyes are constantly turned and who ordinarily holds his position for life, it was not easy for one who during long years had possessed and exhibited the qualities of leadership in the highest degree and who was still full of energy, to reduce himself to a political nullity. To the Liberal Party and to the whole country he was still Gladstone, just as an abdicated monarch is always His Majesty. Furthermore, the plan of self-effacement which he had formed proved hard for him to carry out. Prayers and acts of penance could not form the sum of his existence any more than they did that of Charles the Fifth at the monastery of San Yuste. His vehement spirit, haunted by the memories of a thousand battles, only waited for an occasion to burst forth again. This soon presented itself. The Bulgarian atrocities drew Mr. Gladstone from his retirement. Overflowing with anger and indignation, in a series of passionate speeches which stirred the emotions of the English people, he denounced the cruelties of the Turks and the abject system of government which exposed Christians to the violence of savage hordes. In this oratorical campaign Mr. Gladstone, who had passed through so many incarnations, successive and simultaneous, appeared more clearly than ever before as a popular chief. The temperament of the demagogue (using the word in its etymological sense), which contended for a place among many other traits in that protean nature, had at last, after long years of growth, found its fullest expression. At the time when the death of Palmerston closed one epoch in the history of England and opened another, a sagacious observer, predicting for Mr. Gladstone, in spite of certain reactionary tendencies of his, the future leadership of the Liberal movement, ventured the assertion that, if he became the leader, it would not be as the favorite of a party but as a popular chief, and added :

From the time I first heard Gladstone speak when carried beyond himself by the passion of debate, I came to the conclusion that nature meant him for a popular demagogue, and that the scholarlike

moderation that his university training had imparted to his habit of utterances was a matter of education, not of instinct.<sup>1</sup>

His generous and impulsive instincts, tempered by a religious nature imbued with the ideal of virtue and justice, naturally inclined him to espouse all aspirations which claimed to be good and just, and which at the same time served his political ends. He eagerly embraced them as events brought them to his way. In his imagination they became realities, entering him as he advanced, turning now to the left and now to the right as his path turned in those directions. But should they block his progress, asked an inner voice. Was this then, their enemy? Not at all; they had a place in the bottom of his heart. Truly they had a place there, and a legitimate place. Reason itself plead for them. And when it came to that, Mr. Gladstone's intellect, with its incomparable flexibility, presented argument after argument which made those aspirations which were claiming satisfaction appear to be an irresistible postulate of human logic and an imperative command of the logic of events. But after his dialectic, so too admirable, had carried conviction rather to his own mind than to the minds of others, by an unconscious impulse he turned back to the source of his own opinions, to that impetuous feeling the great storehouse of which is in the heart of the people. By tuning his soul into harmony with that of the people, Gladstone evoked shouts of approval which, rising like furious waves, supporting and overtopping each other, at last joined in a roar like that of the ocean. With a single stroke he burst the bag of Æolus, and if the foolish and blind would not follow the direction of the unleashed winds, so much the worse for them. He took the people as his witness and judge,—judge in last instance his intelligence being right because its heart was right. Logicians might dispute over the boundaries to be drawn between politics and morals; the people was charmed precisely by Mr. Gladstone's confusion or identification of the two,

<sup>1</sup> *New York Nation*, 1865, vol. i, p. 586; *English Correspondence*.

in substance and in form. His speeches, always on the lofty key of righteousness and justice, transported his hearers into a region whither the people, the victims of secular injustice, love to be carried, though it be only in imagination. The respectful intimacy with the Almighty which Mr. Gladstone was in the habit of assuming pointed him out to the people as the fortunate man of the Psalm, who walked not in the council of the ungodly, but whose delight was in the law of the Lord, and in His law did he meditate day and night. His hearers felt themselves drawn into the presence of the Lord. The fire and the accent of deep emotion which filled all the speeches of Mr. Gladstone furnished to the masses the strong sensations which they craved, while the militant temper displayed in his utterances flattered the lower instincts of combativeness which exist in all crowds, in crowds of Englishmen more than any others. Thus he came to exercise over them a veritable hypnotic power; and to him can be applied the phrase used in the Orient concerning a celebrated *imam*, a military and religious chief; "by a single breath he could wake the tempest in the soul, and the heart of man hung on his lips."

By the patronage of Mr. Gladstone the prestige of this immense power was bestowed on the Federation, and that too at the moment when, in consequence of the campaign against the Bulgarian atrocities, his popularity had reached its zenith. The inauguration by him of the new organization gave to this provincial union a national significance, and—what was a matter of the greatest importance—stamped it with the hallmark of genuine Liberalism. The creators of the Federation had practically denied the authority of the official leaders of the party; but, having Mr. Gladstone, they had with them the real chief of Liberalism. It was the peculiar position of Mr. Gladstone after his abdication of leadership which alone made it possible for the Birmingham Radicals to carry out this manœuvre. From this point of view as from all others, the visit of Mr. Gladstone, which was arranged by Mr. Chamberlain and his friends, was on their part a master stroke.

Before an immense audience, estimated at 30,000 persons,

Mr. Gladstone commended the new organization and eulogized the popular principle introduced at Birmingham.

And as the law of popular election, [he said] is the foundation of the British House of Commons, so, if I understand you aright, the principle and practice of your great town that local organizations shall be governed by the same principle, and that free popular election shall be its basis and its rule. I rejoice not merely that you are about to inculcate this lesson, but that the large attendance to-day of many hundreds of representatives of the constituents of the country, met together to consider this subject and to justify their counsel with you, testifies to the disposition which exists to adopt this admirable principle of which you have given the example. Of which, if it be freely and largely adopted, I for one am sufficiently sanguine to predict with confidence the success.

After having shown that the Liberals needed organization more than the Tories, because the latter represented political immobility, Mr. Gladstone recalled in eloquent terms the part played by the city of Birmingham in carrying the Reform Bill, and then complimented it anew for being "likewise the first town to raise the banner of order in the Liberal party." His remarks, however, had reference to the "local organization." Concerning the rôle of the Federation which he had commenced to inaugurate—concerning the programme which it had mapped out, the sphere of influence which it had arrogated, its attitude toward the party leaders and toward the existing constitution in order in general, Mr. Gladstone was not explicit. He turned upon the Eastern Question, and soon the entire audience was caught up in the wild enthusiasm which his speeches on this topic always excited. As to the Federation, the great fact remained that the leader of English Liberalism had made himself its sponsor.

In the polemics to which the new organization gave rise in the press and on the platform, it was given the name of Caucus, after the organizations of the American parties, to which it was unkindly compared. Under this name it entered English history, there to play a part which could not fail to become important.

M. OSTROGORSKY

## THE FUEROS OF NORTHERN SPAIN.

THE meanings of the word *fuego* are so varied and have been so loosely defined that the casual reader is sure to be involved in the greatest embarrassment. In its narrower sense it designates any privilege or immunity granted to places more or less outside the regular judicial administration of the country. In its broader sense, however, it means law in general, or legal system. Thus the codified civil law, or law of the land, based on the *Corpus Juris*, but largely supplemented by provisions of the canon law, was called a *fuego*. Such were the monuments of Alfonso X. Distinct from these general codes, although sometimes embodied in them, were the special codes, called provincial and municipal *fuegos*. Such were the *fuegos* of Nájera and Sepúlveda. An example of the combination of general and local law is furnished by the *fuego* of Leon, which consisted of two parts: the first, a general code for the kingdom at large; the second, a municipal charter for the town. In the latter case it is plain that the word *fuego* is used in the sense of charter, or privilege. Such charters were numerous in the eleventh century, and still more so in the twelfth and thirteenth. They were granted by the kings of Spain to their various provinces and cities, and even to the villages and hamlets. Many of those of the North of Spain were borrowed from Valencia, Cuenca and other parts of the kingdom. It is, therefore, impossible to study intelligently those of the North without going, at least briefly, into the history and origin of *fuegos* in general.

Close analysis distinguishes six different senses in which the word *fuego* (mediæval Latin: *forus*) has been used:

1. Derived from the Latin *forum*, the word meant originally the place of jurisdiction. The Roman magistrates of these provincial *fora* are said to have paid all possible deference to established usage. Hence the transfer of the word to the



latter sense. In his Code of the Seven Parts Alfonso explains the genesis of customary law by saying: "usage springs prescription (*tiempo*), and from prescription custom, and from custom fuero."

2. By an obvious extension of the latter meaning, the term came to be used for any body of law, as for example, the *Juzgo*. So del Molino declares: "Fori Aragonum dicuntur leges, quia legum dispositionem fororum vocabulum comprehendit." And again: "Fori Aragonum dicuntur statuta."

3. A specialization of meaning brought the application of the term to the civic rights conferred on particular cities. In the well-known fueros granted the Mozarabs, Castilian Franks in Toledo. These were mere privileges or immunities. So far as they designate tenures of property they are equivalent to the French *coutumes*, or "usages;" as *Encomienda de Galicia* and *Les Fors et Coutumes de Béarn*. Under this head may be classed the *Cartas Pueblas*, describing a number of numerous petty directions of a paternal government.

4. Many documents were called fueros which were records of gifts from landed proprietors to ecclesiastical or monastic institutions. These fueros of the privileged cities are embodied in the *Novísima Recopilación*. In this collection come also the judge's legal opinions of the fuero, of the right of heredity and of penal offenses. Therefore, in one sense a declaration or opinion of a magistrate was called a fuero.

5. The privileges of a great body of sheep and cattle (called the *Mesta*), etc.

6. The charters granted to practically autonomous states in Northern Spain and Southern France. In France the states were Labourd, La Soule and Béarn; in Spain the so-called "exempt provinces" of the Basques and Navarre. It is the fueros of the Basques that have played the principal part in history as charters of liberty; and they, together with the fueros of Aragon, have the greatest interest to students.

The sources of the provisions found in general and particular fueros (using the word in the second sense above indicated)



are to be sought in the Roman and Gothic codes and in ancient custom. Some were taken literally from the Isidorian collection of decrees and decretals, and from acts of the various councils of Toledo. It is impossible in the narrow limits of this paper to enter fully into the historical details of their growth. The salient points may be indicated thus : first, the early subjection of the cities to the barons, attributable to the feudal system, which however was far less important in Spain than in Italy or France, and had no effect whatever in the Basque provinces ; second, the general movement for liberty and independence which developed under the influence of the Crusades and which aimed at obtaining privileges and immunities from the kings ; third, the concession of the liberties sought for from various motives of royal policy—the increase of royal power and the restriction of that of the great lords, the stimulation of the growth of towns, the regulation of taxation, *etc.* Before taking up the municipal *fueros*, let us consider the general code on which they were so largely based.

### *The Fuero Juzgo.*

This body of law dates probably from the seventh century. Alphonso de Villadiego assumed that it originated in the fourth council of Toledo, or at least under the Gothic kings. Up to the time of Receswinth, the Visigothic king who digested the code, Spain had used the Roman law as contained in the Breviary of Alaric. This latter was gradually superseded, however, by the *Fuero Juzgo*, which became the sole code. Its translation from Latin into Spanish was probably made under Alfonso X.

As to the general scope and character of the code, Guizot's account is most just :

All subjects of legislation are there met with. It is not a collection of ancient customs nor a first attempt at civil reform ; it is a universal code, a code of political, civil and criminal law, a code systematically digested with a view of providing for all the needs of society ; but it is also a system of philosophy—a doctrine. It is

preceded by, and here and there interspersed with, dissertations upon the origin of society, the nature of power, civil organization and the composition and publication of laws; and not only a system [of legal philosophy] but also a collection of moral maxims, exhortations, warnings and advice. The *Forum Judicum*, in a word, is at once a legislative, a philosophical and a religious character. It partakes of the several properties of a law, a science and a sermon. The cause is simple: the law of the Visigoths is the work of the clergy. It emanated from the councils of Toledo. They were the national assemblies of the Spanish monarchy.

The code contains 592 sections, divided into twelve books. The twelfth book, concerning the Jews, contains in general the formulas of the inquisition. In general, however, the code is one of the mildest and most just of the middle ages. In respect to penalties for offences, it was distinguished from the Frankish codes by making all men equal before the law. Ordeals of fire and water were reserved for grave cases; torture for capital offences only. The principal punishments were fines, the lash, banishment and servitude.

In respect to domestic relations, the influence of both Roman law and Christian doctrine is clearly traceable. Marriage was encouraged in various ways, not only with a view to the increase of population in general, but with reference to fusion of the races. The matrimonial contract was conditional on the consent of the parents, and the bride's dowry (furnished by the husband) was one-tenth of his estate. Divorce was obtainable only on Scriptural grounds.

From a linguistic standpoint the *Fuero Juzgo* was to the Spanish Language what Luther's Bible was to the German.

### *The Fueros of Leon and Castile.*

Of the provincial charters the oldest that we have is to be the fuero of Leon. Alfonso V granted this to the king of Leon in 1020. It contains thirty sections, to which have been added the legal opinions of Alphonso VI by way

<sup>1</sup> Of the various editions, that of the Academy in 1815, in Latin and Spanish, is the best.

pendix. After the fuero of Leon came those of Nájera and Burgos respectively: the former in 1035, given by the King of Navarre, Sancho el Mayor, and confirmed by his son, King Garcias. The *Fuero Viejo* of Castile, granted by Count Sancho (995-1015), was published by Pedro of Castile, but the date of its formulation is uncertain, though about 992, according to Schmidt. Though now obsolete, its publication became necessary to define the prerogatives of the aristocracy.

Some charters were offered especially to foreigners, as the *Fueros Francos*. Of the capitulations granted the Moors and Jews, the oldest is that of Huesca (1089). These were common in the frontier towns and especially in places which had been recaptured from the Moors (*e.g.* Oloron in Béarn, 1080). Jaca's fuero dates from the Moorish expulsion, and was confirmed in 1063.

The most important of the municipal fueros of Leon and Castile is undoubtedly that which Alfonso VIII gave to the city of Cuenca.<sup>1</sup> Even in the time of Alfonso the Wise, this fuero was held in the highest honor by jurists, and its provisions, either entire or in part, are found verbatim in the fueros of Alcázar, Alarcón, Placencia, Baeza,<sup>2</sup> Consuegra and Sepúlveda.

The importance of these Spanish town charters can hardly be overestimated, from the standpoint of either social or political history. They throw the clearest light on the domestic life of the time, and they mark an important stage in the development of the national state. The communes of Spain were of greater antiquity than those of other countries of modern Europe, Italy perhaps excepted. Through the fueros the members of these communities gained all the security that law could give them for their persons, their honor and their property. No person duly enrolled on the list of citizens could be punished with loss of life or limb, or deprived of

<sup>1</sup> Cf. Schaefer, *Geschichte Spaniens*, vol. ii, p. 428.

<sup>2</sup> Marina has shown that the careless scribe very often forgot even to substitute Baeza for Cuenca in the transcription.

his property, except by sentence of a court of law in conformity to the fuero or charter of his town. If a king issued an order contrary to this privilege, anyone who executed the illegal mandate was liable to the *lex talionis*.

In addition to these municipal charters, it only remains to mention the great code of Alfonso the Wise, begun by his father, Ferdinand III, which from its seven parts was called *El Setenario*, or *Las Siete Partidas*.<sup>1</sup> This was a compilation drawn from the Pandects, the canon law, the *Fuero Juzgo* and other sources. It was finally adopted as statute law in Castile and Leon in 1348. Supplemented by the eighty-four *Leyes del Toro* of Ferdinand and Isabella, revised by Philip II, it has constituted the basis of Spanish jurisprudence to the present day.

The struggle between constitutional liberty and royal prerogative in Castile presents no such striking peculiarities as in Aragon and cannot be as accurately traced. From the ancient laws it appears that the monarch was elected by the clergy, nobility and people, but that his prerogative was extremely limited. The Cortes was almost coëval with the constitution, and it exerted pressure on the king by the familiar device of withholding money-grants till all business relative to the public welfare had been transacted.

The Castilian nobility, with its two grades, the *ricos hombres* and *hidalgos*, or *caballeros*, maintained a degree of freedom unknown even in contemporary England. The *ricos hombres* claimed the privilege of remaining covered in the royal presence and of approaching their sovereign as equals. The right of private war was fully secured to them. It was not till the time of Charles V that the royal policy effected finally the overthrow of the nobility and the suppression of the liberties of Castile.

<sup>1</sup> The titles of the seven divisions embody an acrostic of King Alfonso's name: A servicio de Dios; La fe católica; Fizo nuestro señor Dios; Onras señaladas; Nascen entre los homes; Sesudamente dixéron; Olvidanza et atrevimiento. This code, as well as the municipal fueros, received exhaustive scientific discussion in Marina, *Ensayo historico-critico sobre la Legislacion de Leon y Castilla*.

*Aragon.*

Aragon resisted longer the increasing power of the royal prerogative. With the exception of the *Hermanidad*, a union of local authorities for police purposes, the division of her Cortes into four arms instead of three (the fourth estate alone being representative), and the *Justicia*, her institutions were very similar to those of Castile. They furnish us the earliest examples of representative government, and are, next to those of the Basques, the most interesting developed in Spain. "Law first, kings afterwards," being her proud device, the king was only first among equals. This appears in the formula employed at the coronation, when in presence of the Cortes the *Justicia* declared:

We, each of whom is singly as good as you, and who, united, are more powerful than you, make you our King on condition that you respect our fueros; if not, NO!

These words depend only on the authority of Antonio Perez, minister of Philip II, and their authenticity therefore is uncertain, but they are characteristic of the spirit of Aragonese institutions. Isabella declared openly that she wished to see the Aragonese revolt, so that she might take away their fueros. The most important embodiment of these fueros was the *Privilegio General* granted to the nobles and burghers by Don Pedro in 1283. This document is comparable with that wrested from King John at Runymede in 1215. The barons of Aragon, united for the defense of their fueros, compelled the grant of the charter at Saragossa. It was a confirmation of ancient privileges and, like *Magna Charta*, it included all classes alike. But, as Prescott says: "It differs from the *Magna Charta* wrested from King John by being conceded, however reluctantly, not by a pusillanimous prince, but by one of the ablest monarchs who ever sat on the throne of Aragon."<sup>1</sup> Hallam considers the *Privilegio General* even more satisfactory than *Magna Charta* as a basis of civil liberty. It was certainly as

<sup>1</sup> Ferdinand and Isabella, I, 74.

highly appreciated by the people of Aragon, and the subsequent evasions and confirmations of its provisions are entirely parallel to constitutional development in England during the thirteenth and succeeding centuries. In the struggle for the enforcement of the privileges already obtained, Alfonso III, in 1287, was induced to grant the extreme right of "union," which was merely an authorization of the nobles and towns to take arms against the king. This right of revolt, however, lasted only until 1348, when Pedro IV, having crushed a rising of the nobles at Epila, abrogated all charters authorizing "union."<sup>1</sup> Though Pedro's policy greatly increased the power of the crown, it was still limited by the authority of the *Justicia*. The office, according to Aragonese authorities, corresponded in some measure to the Ephori at Sparta, and to the *corregidor* of the Basques. The justiciar, endowed with powers both executive and judicial, was primarily guardian of the *fueros*, and he could interpose his authority against royal acts, even if not solicited. His person was sacred, and for the conduct of his office he was accountable to the Cortes only. The office was in existence for nearly five centuries,—from the twelfth to the seventeenth,—and becoming more and more important in its later days, was the object of the greatest jealousy on the part of the monarch. As the *ricos hombres*, or nobles of the first rank, were exempt from corporal punishment, the justiciar was chosen exclusively from the equestrian order, and he held by a life tenure. The exaggerated dignity of this officer is illustrated by the fact that in administering the oath of coronation he remained seated and covered, while the monarch kneeled bareheaded and swore to maintain the liberties of the people. The important functions of the office in protecting the subjects lasted till Philip II, who hanged the incumbent and made the office appointive.

<sup>1</sup> It was at this time that occurred the famous incident in the assembly convoked by Pedro at Saragossa. Having cut the charter of "union" with his dagger, he wounded himself and allowed his own blood to efface the writing, declaring that "what had already cost so much blood should be redeemed by his own." In this way he won the surname "El del Puffal." Zurita, tome ii, p. 229.

*The Basque Fueros.*

The Basques are the most interesting of all the peoples of Spain. No contrast could be more marked than that between these active mountaineers and the haughty grandees of Castile and Andalusia. The love of freedom which proverbially finds its home among the mountains has characterized from the earliest time the men of the Basque provinces, and has manifested itself in the preservation of special political privileges almost to the present day. During all the turmoil that followed the Teutonic invasions, the Basques remained always free, if not completely independent; and while the rival Christian kingdoms of Castile and Navarre grew up around them, they still preserved their liberties. In the fourteenth century the lordship of Biscay, which included the territory of the Basques, became connected with the crown of Castile, but through a treaty by which the privileges of the people of the lordship were preserved.

The term "Basque provinces" designates the three divisions, Guipúzcoa, Vizcaya (Biscay) and Álava.<sup>1</sup> On account of their peculiar privileges they have also been known as the "exempt provinces." Their fueros may be traced to two sources: (1) the *Fueros Generales* and *Fueros de Albedrío*, which had their birth in the necessities of pastoral life; (2) laws copied from the ancient Latin municipalities.

The fueros of Vizcaya are the most democratic in character. They grew up in the contests of the inhabitants with their counts, and were probably first collected into a code by Count Juan in 1371. After the final union of Biscay with Castile they were recast (1526), completed and confirmed by the Emperor Charles V.

This final connection of the Basque land with Castile was effected in 1379 on the principle of personal union. The King of Castile became Lord of Vizcaya, and it was by this latter title

<sup>1</sup> The French Pays Basque, including Labourd, Basse Navarre, la Soule and the Vallée d' Aspe, has essentially the same characteristics as those here described.

that the Basques continued to know the Spanish king to the present century. In assuming the lordship of Viscaya, Don Juan, the Castilian king who first united the dominions, swore at Guernica that he and his successors would maintain the "fueros, customs, franchises and liberties" of the land. The obligation to take this oath in person at the same place long remained binding on the Spanish sovereigns, at least in theory ; but in practice the journey, though announced, was invariably postponed to *mañana*, the morrow that never comes.

From the time of the union royal policy was steadily directed toward the establishment of more real authority over the Basques, but the latter clung desperately, and for the most part successfully, to the original principle. A leading article of the Basque fueros exempted the people from taxes not voted by themselves. Henry IV, the successor of Don Juan, sought to violate this principle, but the bearer of his demands was slain by the Guipúzcoans. An attempt of the same king to bestow Basque lands on court favorites was followed by his formal deposition from the lordship of Biscay and the acknowledgment of his sister, Isabella of Castile, in 1473. The oath taken by Isabella is interesting both for its local coloring and for its constitutional importance :

I, as Princess and Lady of the said towns, lowlands and lordship of Biscay, with all places adjoining and adhering to the same, bind myself once, twice, thrice ; once, twice and thrice ; once, twice and thrice ; according to the fuero and custom of Spain, on the hands of Gomez Manriquez, knight, man and noble, who receives this my homage ; and I swear to our Lord God, to the holy Virgin Mary and on the sign of the cross, which corporally I touch with my right hand, and on the words of the Holy Gospels, in whatsoever place they may be, to maintain firm, good, valid and binding now and for all time to come, the said privilege, general and special, fueros, usages and customs, franchises and liberties of the said towns and lowlands of the said country and lordship of Biscay and of all the places adjoining and adhering to the same.<sup>1</sup>

Isabella respected the Biscayan fueros ; but when the absolute monarchy had been thoroughly established in Spain, an

<sup>1</sup> Cuerpo del Fuero de Vizcaya, fol. 282.



attempt was made by Philip III, in 1601, to levy duties by royal ordinance. The resistance of the deputies raised so threatening a storm that the king was glad to withdraw the ordinance.<sup>1</sup> A more recent affair of the same character is suggestive of incidents in American history. Under Godoy, in 1804, a stamp tax was imposed on the Basques to aid the general revenue. But the deputies, having declared the law an infringement of their liberties, ordered the stamps burned by the common hangman under the tree of Guernica.<sup>2</sup> And finally, the devotion of the Basques to the Carlist cause, which has been so conspicuous during this century, is due in a great measure to gratitude for the opposition raised by the first Don Carlos, in the council of state, to the projects of Ferdinand VII, which involved infringement of the Biscayan fueros.

The organization under which the practically autonomous government of the Basque provinces was carried on was thoroughly pervaded with primitive democracy. The leading features of this organization in Vizcaya, where it was most complex, were as follows. At the foundation of the system were two assemblies, the one ordinary, called the *junta general*, the other extraordinary, known as the *merindad*. The *junta general* consisted of deputies from the towns, villages and hamlets of the lordship, together with the *corregidor* and three lieutenant *corregidores* appointed by the crown, but with no vote in the assembly, and six *regidores* (minor magistrates) and two popular tribunes appointed by the assembly.

The royal *corregidor* had to be a native Basque, and his functions were strictly those of intermediary between the local and the central authority. The supreme power was invested in the *junta general*, by which the *regimiento*, or magistracy, was appointed. The deputies assembled every two years, on even years, under the oak of Guernica, near the village of that name. Here, in the presence of the *regimiento*, sitting on stone seats, the 108 *procuradores* stood with uncovered heads and took the oath to maintain the fueros and respect the rights of their lord. The *procuradores* then proceeded to the

<sup>1</sup> Recopilacion, fol. 301.

<sup>2</sup> Herbert, Basque Provinces, p. 262.

adjoining chapel, reviewed the list of the deputies, or "good men," as they were called, and opened the session. Priests and lawyers were ineligible as deputies. One lawyer (*letrado*) was summoned in the quality of *asesor*, but without the right to vote. "He was considered a consulting authority," says Webster, "and no other member of the profession was allowed to even enter the town where the *junta* was held, during the sessions." The sessions were open and free to everybody, not secret as in Guipúzcoa.<sup>1</sup> The debates were indiscriminately in Basque and Spanish, but were published only in Spanish.

The regular sessions of the *regimiento* (composed of eighteen members) took place twice a year.

The executive of the province was called the *deputacion de gobierno*. It controlled the acts of the *corregidor* sent to Madrid and all the administrative, military and judicial measures. It superintended the collection of taxes laid by the *junta* of Guernica. It decided as to the proofs of nobility and domicile and exercised a general supervision over such acts of the *corregidor* as touched the *fueros*.

Omitting minor points, the essential features of the Basque privileges may be summarized as follows :

1. Freedom of pasturage, passage and commerce in all the territory belonging to the general community.
2. Complete personal independence for every individual. This principle was carried even into civil process. The person of the debtor was inviolable, as well as his house and his horses.
3. The right of self-defense against everyone, — the lord or seigneur, laic or ecclesiastic, pope or emperor. The killing of the royal messenger, mentioned above, was regarded as a proper exercise of this right, and the three provinces joined in protecting the slayer as defender of the *fueros*.
4. Exemption from the obligation to do military service, except (1) in time of war, (2) in their own province and (3) at the

<sup>1</sup> Mr. J. Wentworth Webster is a most valuable authority on this subject, but there appears to be a discrepancy in his statements of 1882 and 1888 respectively, as to the sessions being open. The fact seems to be that the practice varied, and that in Vizcaya the sittings were open, whereas in Guipúzcoa and Álava they were held "*a huis clos*."

command of the *junta*. This service would correspond to the German *Landsturm*, which can only be called out in time of invasion. The *junta* of Guipúzcoa required every one between sixteen and sixty years of age, and capable of bearing arms, to have firearms and to be ready for mobilization. Recruits could not be led beyond "*el árbol malato plantado en Luyando*" in Vizcaya, without the consent of the *junta*, and even with that consent they received pay for three months in advance or a sufficient guarantee to secure it.

5. The absolute exclusion of royal troops from the country except in case of a few towns. This exception is rarely mentioned.

6. The Basque contingents of the royal army always to have Basque officers. Gonsalvo de Córdoba, after some experience in the matter, said that he would rather command wild lions than Basques.

7. Exemption from every royal tax or impost. The money voted by the *juntas* to the King of Spain was a free gift (*donativo*), never a tribute. This gift was voted only in extraordinary cases, and only when all the other questions of the government had been settled. The only exception to the rule—the only tax levied (and that only in Guipúzcoa)—was the *alcabala*, upon the importation of foreign wines and the sale of iron in the province. This, however, hardly brought in 42,000 reals. The sale of salt and tobacco was free, and there was no tax on timber or contracts or inheritance.

8. Entire freedom of commerce, both internal and external. The Ebro, on the south, was the only line of any restriction, and this line was subject to all sorts of special arrangements. The right of free commerce was always a source of especial contention between the Basques and the royal authority, and it was only by the utmost vigilance that it was preserved against the jealousy of the kings and of the other provinces.

9. The enjoyment of the rank and privileges of *hidalgos*. All who could prove Basque parentage for two generations claimed to be "noble." The logic was this: The Basque was a freeman in law and fact; but the only man thus free was the

noble: therefore the Basque was noble. (As decapitation was reserved for nobles exclusively, an old Spanish writer says that in more than one case nobility was established simply by evidence that an ancestor had been decapitated.) This so-called nobility meant little more than exemption from servitude and taxation, but it furnishes an element in the pride of the peasant and the poorer classes.<sup>1</sup>

On the side of private law there was a marked distinction between the system of the towns and that of the country region (*terra llana*). The towns were regarded as pertaining in a certain sense to the crown, and accordingly the principles of the Castilian code were recognized. In the country the Basque fueros were maintained in their purity. As an example of the difference may be cited the rule as to testamentary disposition of property. In the towns the father's right of bequest was limited to a third or a fifth of the property; in the country he might leave his estate to a single child, provided he secured to each of the other children "one of the highest trees, a tile and ten pence in money." Again, under the *fuero de perdón de los parientes del muerto* a murderer was exempt from prosecution in the *terra llana* if forgiven by the relatives of the victim.

A curious feature in the field of family relations was the custom of concubinage. This was a legitimate practice for both laymen and clergy and was based on considerations of "the public good and gain in population." In the fueros of Vizcaya occurred the following passage :

Inasmuch as the clergy, being obliged to lead a life of celibacy, are continually committing divers immoralities *etc.*, and endangering the peace of families,—now, in order that they (the *curas*) shall have no excuse for corrupting our wives and daughters in future, they shall be allowed to maintain one or two concubines (*barraganas*) in their houses.<sup>2</sup>

<sup>1</sup> Compare the meeting of Don Quixote with the Biscayan. "What, me no gentleman!" cried the wrathful peasant, "I swear thou be a liar, as me be Christian. If thou throw away lance and draw sword, me will make no more of thee than cat does of mouse. Me will show thee me be Biscayan and gentleman by land, gentleman by sea, gentleman in spite of devil; and thou lie if thou say contrary."

<sup>2</sup> Cf. Marina, Ensayo, art. 207.

The relations arising from the practice of concubinage were minutely determined by the laws. No reproach or loss of privilege attached to the offspring. The children of a *barra-gana* preceded collateral heirs in the succession to the father's estate, and in the absence of any specific provision for them they could even share the inheritance with the children of the wife.<sup>1</sup>

An attempt in the thirteenth century to crush out the practice, especially among the clergy, met with little success; and when, in the time of Don Pedro (1351), it was in a measure done away with, prostitution took its place.

The governmental organization and *fueros* of Vizcaya were substantially those of all the provinces of the Spanish Basques. The differences are of slight importance. For example, while the general *junta* of Biscay met once in every two years, as stated, that of Guipúzcoa met every year, and that of Álava three times a year. If the *corregidor* of Guipúzcoa was absent, the presidency of the *junta* belonged to the *alcalde* of the city or borough where it is assembled. The *Hermanidad* of Guipúzcoa was a republican federation composed of about one hundred cities, all having the right to become the seat of the general *junta*. This *junta* was composed of sixty-six civil officers, called *procuradores*, or commissioners, also under the presidency of a *corregidor*. In Álava the constitution was nearly the same. A peculiar feature here was the right enjoyed by the wives of the *hidalgos* of voting in the *junta*.

In the details of political and social life, in short, the *fueros* of the Basques varied from valley to valley and village to village as greatly as does the language, of which there are twenty-three varieties and eight dialects. Institutions and language agree in marking these mountaineers as a peculiar people.<sup>2</sup>

<sup>1</sup> Cf. Fraser, vol. xxii, p. 50.

<sup>2</sup> The Basque language has been a stumbling block to the philologists, and its peculiarities, from the standpoint of its neighbors, have been the subject of many gibes. Some one has described it as "written Solomon and pronounced Nebuchadnezzar"; and there is a saying that the devil studied it seven years and only learned three words. The use of *v* and *b* interchangeably is the basis of Scaliger's famous *mot*: "Happy the people to whom *vivere est bibere*."

In resisting the constitutional liberalism of the present century the Basques lost their *fueros*. When the constitution of 1812 was put in operation they perceived that under this system their special privileges would be threatened, and it did not require the formal abolition of their *fueros* by the Castaños government, in 1833, to throw the mountaineers into a passionate support of Don Carlos. Failing to comprehend the general liberty which constitutionalism involved, they saw in the Liberals only the assailants of their ancient rights. The Conservatives and Clericals represented the old order in church and state, and Don Carlos stood for legitimacy and divine right. Though in the heat of war this sovereign whom they recognized showed small respect for their precious *fueros*, they trusted that he, like all his absolute predecessors, would in peace restore them as before. In the war that lasted from 1833 to 1839, the Basques fought as freedom-loving mountaineers have always fought, but victory was not for them. By the treaty of Vergara, however, though they recognized Isabella, they retained their *fueros*. The second Carlist War, 1872-76, had a different outcome. After the suppression of the insurrection, at the accession of Alfonso XII, the abolition of the *fueros* was decreed by the Cortes, and, after a noisy opposition, was put into execution. The three provinces, Vizcaya, Guipúzcoa, and Álava were required to furnish annually 2,050 conscripts to the Spanish army and to pay their share of the national taxes ; but they, as well as Navarre, were given a delay of ten years. At the end of this period, *i.e.* in 1886, they negotiated with Sr. Sagasta for a new delay of one year, and in the course of that winter Queen Christina made it indefinite in time. This was only a bit of state policy, to soothe the Carlists, and its effect was evident when, in 1887, even the most devoted adherents to the cause of the pretender joined in a cordial reception to the queen on her visit to their country. A compromise with the central government, by which \$300,000 is paid as an equivalent of all taxation, has left these mountaineers a measure of independence in civil and municipal administration. But the autonomous institutions for

which they fought and bled are gone. Formerly they were a republic *de facto*, and they themselves used the name *republica*, — as did, in 1693, the inhabitants of the Vallée d'Aspe and as Andorra does still.

Though it has been claimed that the Basques, in supporting Don Carlos, were fighting for civil and religious liberty, there is room for the suspicion that they fought more for a privilege than for a principle. They had immunities not shared by the other provinces of the kingdom; and such a situation was inconsistent with the spirit of the times. It seems, therefore, as if one large element in their action was pure selfishness. As one has expressed it, they possibly fought more for immunity from just taxation than for constitutional liberty. Yet even if this were true, it was a late manifestation, — not the actuating principle in the earlier history of the people. But whatever view is taken on this question, an allowance must be made, even in its later phase, for the ignorance and superstition of the Basques. Only with such allowance can the strange contradiction be understood of "Republicans fighting for divine right." In the Carlist wars the Basques stood out against the ideas of national unity; they therefore became an obstacle to progress. Their very *fueros* had outlived their usefulness and had become an instrument of tyranny. It was best that they should perish.

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## CAMPBELL'S PURITAN IN HOLLAND, ENGLAND AND AMERICA.<sup>1</sup>

**T**HOUGH the general scope of Mr. Campbell's book is clear enough, yet he cannot be said to have stated with scientific precision either the theory against which he is arguing or that which he proposes to put in its place. He finds that previous writers have assigned to the political institutions and to the moral and intellectual life of the United States an English origin. This theory he opposes, arguing that Holland rather than England is the parent of the United States. The influence of Holland on America, he contends, was twofold: first, direct, through the foundation of New York, and through immigration to the United States; second, indirect, through the Puritanism of early New England, which, he holds, was mainly Dutch.

Mr. Campbell after all is not severed by an absolute gulf from the predecessors against whom he argues. No sane man would deny that Dutch influence, working as he suggests, has counted for something in determining the character of the United States. Even Mr. Campbell would hardly deny that the founders of Virginia, of Plymouth and of Massachusetts took out something which was proper to them as Englishmen, something which has had an effect on the lives of their descendants. The question really is: What is the extent to which each of the two forces in question has acted? This from its very nature is not a question which can be answered with scientific exactness. The fusion of elements in national life is chemical, not mechanical. To ask which of the characteristics of modern America are of Dutch origin, which are of English, which have been developed by special conditions of life (the possibility of this third class does not seem to occur to Mr. Campbell), is rather like asking whether the rocks, the sky, the trees or the water have most to do with determining the character of a landscape. A nation's life is an organic whole, not a patchwork. Nevertheless, there is no doubt room for good historical work in tracing the origin and course of particular institutions. And it may be that those laborious and scholarly writers who have endeavored to show how

<sup>1</sup> The Puritan in Holland, England and America. By Douglas Campbell. New York, Harper & Brothers, 1892. — Two vols.

English land tenure and local government have lived on in A have exaggerated their case. Dutch institutions and ideas m survived more largely and played a more important part in A than has been commonly thought. There is plenty of sc an able and learned writer in examining these questions.

A work on the lines thus suggested might have been o interest and profit. Unfortunately it is at once manifest th Campbell has not the knowledge required and that he has inadequate conception of the nature of historical evidence a torical research. It is plain that he formed his conclusions a early stage of his studies and that he has since followed matter not as an inquirer but as an advocate. He shows no to sift facts and discriminate between authorities. Modern are quoted as if they were contemporaries. And even in hi of modern writers, Mr. Campbell seems almost to have c himself to those whose conclusions agree with his own.

The work begins with a short sketch of the economic and condition of England at the present day. Here the autho with his subject in a fashion which, to say the least, does not one with confidence. When he says (vol. i, p. 13) that in E the church "is supported by a tax levied on every one," we eyes and wonder whether Mr. Campbell has ever heard of th tion of church rates. Equally astounding is one of his stat as to the cause of the present English land system. "The classes," he tells us, "have refused to sell land to the poor interview with a land agent, a visit to a land auction market probably open Mr. Campbell's eyes. The general condemna the land and church systems in England may be right; but th certainly two sides to the question. The one thing which man will not do is to assume with Mr. Campbell that all th lies on one side and dogmatize accordingly.

Mr. Campbell traces the course of the Protestant movement the sixteenth and a part of the seventeenth century in Engla in the Netherlands. An Englishman is naturally better judge of the former part of the work. It is not an exaggera say that Mr. Campbell has not brought forward a single new original inference. Everything that he has to tell us is to be in such easily accessible writers as Hallam and Froude. Mr. bell has not even been at the trouble of verifying their statem any reference to original authorities. One cannot perhaps illustrate the character of his work than by one or two of the

into which he has thus been led. He tells us (vol. i, p. 453) that Parker "accumulated an enormous fortune by wholesale corruption," and that "*among other things, he established a fixed tariff for the sale of benefices*" (the italics are mine). For this startling charge of wholesale simony Mr. Campbell refers us to Froude, volume xi, page 100. The only authorities which Mr. Froude gives us are two state papers. One is a financial statement of the condition of the revenues of Canterbury, drawn up a year after Parker's death and endorsed by Grindal. It is there stated, without any implication of blame, that Parker annulled all the dispensations granted by Pole and issued fresh ones. The other document is a resolution of the privy council abolishing dispensations. This Mr. Froude says was "evidently directed at Parker's practices." The evidence, however, Mr. Froude does not adduce. The expression, too, "Parker's practices" is somewhat invidious. Even on Mr. Froude's showing, there is not a tittle of evidence to prove that Parker "established" anything. No doubt the system of dispensations was a thoroughly bad one. No doubt Parker accepted it as part of the machinery which he found in existence and did not reform it. How far a man is to blame for not taking in hand a particular reform, is a question which can only be judged by reference to his whole career and circumstances. But there is a wide difference between a man who as an official acquiesces in a corrupt system, and a man who, as Mr. Froude implies and Mr. Campbell states, devises a corrupt system for his own personal emolument. Mr. Campbell might have reflected that if Parker had really practised wholesale corruption, and if the dispensation system as described was only one "*among other things,*" some trace would be visible in the controversial literature of the age—a literature to which Parker's enemies contributed largely—and so experienced an advocate as Mr. Froude would not have had to build his case on two documents written after Parker's death.

In another place Mr. Campbell is led astray by his unquestioning reliance on Hallam. We are told (vol. i, p. 470) that Whitgift "was ignorant, probably not even knowing Greek." But Mr. Campbell must have known that Whitgift was Margaret Professor of Divinity at Cambridge and lectured on the Apocalypse, and one might have thought it strange that a divine of any distinction should have been such a thorough-paced impostor as Whitgift was on this showing. If Mr. Campbell had sifted the case with ordinary care, he would have found that Hallam's authority was the editor of the *Biographia Britannica*, Kippis, who was born in 1715. Kippis's words are:

"His [Whitgift's] learning seems confined to the Latin language. Hugh Broughton often objected to him." Now if Broughton was as good as a witness against Whitgift, he is good as a witness for him. When Broughton was engaged in a controversy with Richard Hooker on the nature of Christ's descent into hell, he voluntarily chose Broughton as one of the arbitrators to whom the controversy might be referred. The fact is that Broughton was a very learned, very dogmatic, and somewhat wrong-headed controversialist. If Mr. Campbell knew anything of the literary history of the sixteenth century, he would know that differences of opinion as to the value of a preparation for the position of an accent often gave occasion for charges of ignorance rather than that of mere ignorance. We may be pretty sure that when Broughton did charge Whitgift with ignorance of Greek, he only meant that they differed as to the interpretation of certain passages in the Bible. In this case, however, Mr. Campbell might have settled the question by a very simple test. If he had turned to Whitgift's own Greek writings, he could scarcely have gone through a hundred pages without finding ample proof that the writer knew Greek. Broughton may have been wrong-headed and ill-judging as an economist and politician; but they must have a very high standard of scholarship who deny him the title of a learned man.

Hallam and Froude are not the only authorities whom Mr. Campbell follows. He relies not a little on Mr. Hubert Hall's *Sixteenth Century Elizabethan Age*, a book published in 1886. Mr. Hall is a man of a quarry of considerable learning. He is also evidently a man of exceedingly strong views as to the morality of the Reformation and those who followed in their steps. He avowedly writes as an advocate. But the fact that he never cites a single reliable authority gives the reader any opportunity of testing his statements. He is out of court as a serious witness. He might no doubt be a suggestive guide to any one who followed up his line of argument independently. It is, however, but just to Mr. Hall to say that he makes no claim to the sort of authority which Mr. Campbell claims for him. He frankly admits in his preface: "I have followed my personal inclinations in the historical coloring of my narrative." And this is the writer whom Mr. Campbell quotes as authority to quote Thucydides on the Syracusan expedition, or the Venetian Despatches on the Peninsular War.

As to his general estimate of the English Puritans and their opponents, I would only say this: Mr. Campbell throughout his work as if the rulers of the church were fighting against the



of Calvinistic doctrine and that absence of ritual which usually accompanied such doctrine, as things which might be tolerated within the church. He forgets that the Puritans, fully as much as their opponents, were fighting not for toleration, but for dominion. That really was the strength of the position of Parker and Elizabeth. They had at their back a mass of people who cared little about doctrine and had no enthusiastic devotion to Anglican ritual, but who at an early stage of the conflict clearly perceived, what later events amply proved, that the little finger of the presbyters would be thicker than the loins of the bishops.

When Mr. Campbell crosses the Atlantic he fares somewhat better. He has no doubt succeeded in showing that many good things which the citizens of the United States enjoy, judicial, forensic and administrative, are not of English origin. He has also shown, and this is the best and most original part of his work, that there is at least a strong presumption that many of these good things came from Holland. To discriminate carefully between the Dutch and the English elements in American jurisprudence and American institutions and in the conceptions which have animated those institutions, would have furnished scope for a very interesting work. Yet I venture to think that such a work would have needed greater gifts of historical investigation and greater power of weighing evidence than are manifested by Mr. Campbell ; nor need it have been encumbered, as Mr. Campbell's work is, by an epitome of such a well-known writer as Motley.

There is one of Mr. Campbell's claims which he may I think be fairly asked to abate. He thinks that it is to the example of the Netherlands that the American nation owes its republican form of government. But in fact the founders of the federal republic had no other form of government open to them. Monarchy was too deeply tainted with evil associations to be thought of. George III had a far larger share than the founders of the Dutch Republic in making the United States republican. No doubt Holland furnished a very valuable example of federalism. But on the other hand we must remember that the system of an executive head and two chambers was one with which almost every state was practically familiar in its own local constitution. It is a matter of historical evidence that those constitutions were in their original form framed by Englishmen, and it is a matter of almost certain inference that the framers were largely influenced by the example of the mother country. And as to Mr. Campbell's main contention, one is tempted to say: *Quis*

*negaverit*? What school of writers have ever held that Americans were nothing more than transplanted Englishmen? No reasonable man can ever have denied that the social, political and intellectual life of America has in it elements other than English. What New England historians against whom Mr. Campbell seems to have emphasized is, the fact that the English colonists who founded New England carried out with them certain institutions which served as a natural and appropriate machinery where the political life could develop itself, and whose influence, working outwards, has done much to affect the political life of the republic. And I think few impartial readers will say that Mr. Campbell has overthrown that view.

The best practical test of his theories is the early history of England and New York. According to Mr. Campbell all that was good in New England Puritanism came originally from Holland. How was it, then, that New Netherland, with pure Dutch institutions and animated by pure Dutch principles, did not far outstrip the imitated imitation? Whether it did so, I leave contentedly to those who have studied the early life of the Dutch colony in the papers of that singularly laborious and judicious writer, Mr. Brodhead. What had New Netherland, before it became New York, or for a century after, to set off against the great New England leaders of once men of learning and men of affairs. When the New England colonies were in all but name self-governing republics, the inhabitants of New Netherland accounted it a triumph if they could wring from their rulers some miserable and transient imitation of popular government. Every New England township had an intense and ever-regenerated sense of its own corporate life. New Amsterdam, with its eighteen languages, was a *colluvies omnium gentium*, without cohesion or self-reliance. Compare the docility with which New Netherland acquiesced, first, in English conquest, then in Dutch reconquest, and in restitution, with the vigorous protest of New Haven when absorbed by the kindred state of Connecticut. Take again the Revolution of 1688. When the people of Massachusetts drove James Andros and were left without a ruler, they at once fell into line as a disciplined and organized community. The people of New York under like conditions, became a helpless mob and fell under the rule of that shallow and reckless adventurer, Leisler.

Nor can any one read the history of the struggle against the mother country and fail to see that it was the peculiar traits of New England which enabled her to stand in the forefront of

tle. Mr. Hosmer, the biographer of Samuel Adams, does not err when he calls his hero "the man of the town meeting." In Massachusetts every popular feeling, whether begotten of genuine conviction, or stimulated and even created by ambitious and at times unscrupulous leaders, at once found articulate utterance.

Mr. Campbell may perhaps reply that all this was due to the influence of the Puritan founders, and that these founders had learnt such from their Dutch associations and sympathies. I can only answer that it seems paradoxical to say that Holland transmitted to her foreign disciples what she failed to transmit to her own children.

This is far from the same thing as a claim on behalf of New England for high moral or even mental superiority. Throughout her career she has had the defects of her qualities. Her history reveals much that is unlovely, not a little that is culpable. From the days of Endicott to the days of Pickering and the younger Adams, she was narrow, intolerant, unscrupulous with the unscrupulousness of one-sided conviction. But she never lost that self-reliance, that strong sense of corporate life, without which republican institutions are idle forms. So far as the life of the American republic has been animated by these qualities, she owes them largely to New England and to the Englishmen who founded New England.

JOHN A. DOYLE

## REVIEWS.

### *History of the United States, from the Compromise of*

By JAMES FORD RHODES. Vols. I and II, 1850-1860. New  
Harper & Bros., 1893. — x, 506, 541 pp.

Almost thirty years have now passed since the great civil war in the United States — a period of time usually allowed to mark the close of a generation. The great majority of those who live and write to-day had little or nothing to do with the struggle. It seems, therefore, as if the time had at last come for something like an impartial narration of the events, and an unprejudiced presentation of the ideas, which prepared the way for that demonstration of national and sectional fury.

I hoped, when I opened the book of Mr. Rhodes, to find something new in his history. It is reasonable to expect that it should come from the North rather than from the South. The victorious party should be more generous and is usually the more fair. I have not been disappointed in my hope, though I must confess to a partial disappointment. Mr. Rhodes had a great opportunity for mediation and more complete reconciliation, and he has not made full use of it.

The first one hundred and fifty pages of his book, in which he surveys briefly our history down to 1850, contain little more original than the views that Professor von Holst has already presented. One meets here the familiar declamation about the virtues of the abolitionists and the iniquities of everybody else, and the same one-sided criticisms upon the administration in the Texas question, the Oregon question, and all the other policies of the government during the fifteen years before 1850.

The study of Webster's 7th of March speech seems to have relieved Mr. Rhodes somewhat of his abolitionist prejudices, and at the point when that great exposition comes into his history, he assumes a more independent and impartial attitude. In the next one hundred and fifty pages, the author appears at his best, and he is himself worthy to be called an historian. His estimate of Fillmore's administration is fair; his literary history of *Uncle Tom's Cabin* is most graphic; and his account of Webster's last hours is so sad and impressive. In this part of the work the style is excellent and the pen portraiture is fine.



In the next chapter, however, the fourth, which has the institution of negro slavery for its subject, the abolitionist assumes again the historian's place. For several years of my own life, I saw slavery face to face, and while the impression which it made upon me was one of decided aversion, I must say that I recognize with difficulty the picture which Mr. Rhodes paints. If a New York artist should unite in a single portrait the deformities of a dozen men whom one may meet any day in the Bowery, throw in a few good points, and call the result the portrait of the average New Yorker, everybody would unhesitatingly denounce the thing as a caricature of the personal appearance of the male population of the city. And yet this is just the method which Mr. Rhodes and all other abolitionist writers upon slavery have followed. In fact, it is the method which historians of any but the first order usually follow. Most histories are but accounts of the excrescences of civilization. They are little more than the record of what is sensational and exceptional. The regular and ordinary course of life, both of individuals and nations, is too humdrum for the average historian to write about, or the average buyer of books to read about; but it is the only true history, and none but the true historian can depict it. The time has gone by when it was necessary to exaggerate the evils of slavery in order to nurse the passions of men for its overthrow. The time has arrived for the cooler impartial study of the nature of this temporary relation between the highly civilized white race and the deeply barbarous negro race—for the discernment of the great problem of history which was solved through this relation. Such study Mr. Rhodes has not pursued, and of such discernment he has not given the slightest evidence.

While reading this chapter, I entertained the hope that, after relieving himself of the fullness of anti-slavery feeling, Mr. Rhodes would regain the more impartial tone of the previous chapter; but this hope has not been entirely realized. The spirit of his section maintains its grasp upon him from this time forward. The way in which he lays the bare hand upon Douglas, and gloves himself in softest fur when touching Seward, in regard to the Nebraska Bill and Popular Sovereignty, is not edifying, to say the least. He plainly intimates that Mr. Douglas invented this doctrine and framed this measure for the purpose of securing Southern support in his ambitious plans to reach the presidency. This is a serious indictment. It means nothing more nor less than that Mr. Douglas was willing to destroy the quiet of his country, which

the Compromise of 1850 had established, in order to draw advantage out of the strife and chaos which he knew ensue. There is no satisfactory proof of this, and the subsequent acts of Mr. Douglas go to disprove it. These acts tend to show that Mr. Douglas believed in the doctrine of Popular Sovereignty conscientiously, and thought that it would confirm the peace of the country. On the other hand, Mr. Seward ridiculed the doctrine of Popular Sovereignty, and knew that the passage of the Nebraska Bill, with its ambiguous language about the abolition of the Missouri Compromise by the principle of the Compromise of 1850, would set the whole country on fire again over the subject of slavery. According to his own confession, he incited his Whig friend, Senator Dixon of Kentucky, to move the amendment to the bill which cleared away all ambiguity and proposed directly the abolition of the Missouri promise of 1820; and he did this with the purpose of destroying the quiet of his country, rousing the slaveholders to violent words and deeds, and creating an issue upon which he might be borne to the presidency. There is certainly far less question as to the issue which animated Seward than as to that which moved Douglas. Rhodes does not, however, even incorporate these facts into his text. Seward into his text. He only refers to them in a foot-note.

The greatest disappointment, however, which I feel in Mr. Rhodes' book is caused by his perpetuation of the John Brown cult. We should consider that the highest responsibility resting upon an historian is the right selection of those personalities which he holds up for the worship of after generations. The morals of the age are determined most largely by the character of its heroes. No amount of purely religious or ethical, will have one tithe of the influence in forming the ideals of our youth that hero-worship possesses. If there is one moment more solemn than another in the life of the historian, it is when he should seek more earnestly than at another to be delivered from all prejudice, error and weakness, it is when he essays the task of the hero-maker. If he fails in this, he may well question whether the other good he may have accomplished has not been unbalanced. There is a mawkish notion prevalent among the members of a certain very advanced class of people in almost all parts of the world, that if you add cant to crime you lessen the crime. So they think that the outcome of such a combination is the most perfect virtue. All of us judge crime more leniently when committed by persons who have views in common with us upon some important subject, and against persons whom we regard with feelings of

tility. But the moralist, the historian and the inventor of epics are under bonds to civilization to rise above such weakness.

The difference between murder and war does not lie in the purpose of the individual engaged in either, but in the fact that in the one case the individual acts upon his own responsibility, while in the other he acts as the agent of a state — of that organization which must be presumed to have the highest consciousness of right and wrong, and to preserve the most perfect adherence to the right. And even in war assassination and the killing of prisoners are not allowable. There is no question that an exaggerated notion of the right of revolution has always prevailed in the United States, but no one has pretended that any man or number of men may set up a claim to any such right on account of grievances under which they themselves do not suffer. The man who undertakes to lead a violent revolution in behalf of wrongs which he professes to think are suffered by others, is nothing more or less than a dangerous adventurer; if he takes any property in such a performance, he is a robber, and if he kills anybody, he is a murderer. He can clear himself from the punishments which attach to such a character only by that success which destroys existing law and government and becomes the basis of a new law and a new government. Measured by such principles, we can place John Brown nowhere but in the class of common criminals. He was extraordinary in the sense that he revelled in crime and made it a business, until he lost the distinction, if he ever had it, between right and wrong.

Mr. Rhodes' psychology of Brown begins in ambiguity and ends in dangerous error. He calls that atrocious quintuple murder committed by Brown and his gang on the Pottawatomie, the night of May 24th, 1856, a "massacre," in one place, and an "execution," in another, and undertakes to distinguish between the deed and the doer, so as to condemn the former, and excuse, or at least modify the condemnation of, the latter. This will do for the criminal lawyer, but not for the moralist and historian, not for the education of the rising generation, not for the civilization of the world. When Mr. Rhodes comes to the Harper's Ferry massacre, even the mild condemnation of Brown's Kansas crimes falls away. Page after page of morbid sentimentalism about the "Old Puritan" culminate in the familiar but revolting proposition that John Brown suffered martyrdom on the soil of Virginia. I myself am a descendant of Puritan ancestry, as I suppose Mr. Rhodes is, and I protest against the injustice to the memory of those revered men, which is involved in attributing

their spirit to a robber and a murderer, even though he be of blood. The honor of martyrdom might with less exaggeration be ascribed to those peaceful citizens of that lovely mountain town who were ruthlessly shot down by Brown's band of assassins who had sneaked into their quiet home in the darkness of the night and seized upon its defences. The Republican convention of 1860 which nominated Lincoln for the presidency, denounced the crime among the gravest of crimes. The people of the North held their view of it with almost complete unanimity until the license of war had demoralized opinion and brutalized expression. No wonder reason has regained its sway and morals have been reëstablished. Let us go back to the view enunciated by the convention, and let us drive the mawkish and corrupting worship of John Brown out of our histories and our epics.

There are many good things in Mr. Rhodes' book. Viewed as a whole, it is in my opinion the best work which has as yet appeared on the period which it covers. But its John Brown cult has injured it as a contribution to the ethics of society and the history of civilization.

J. W. BURTON

*Three Episodes of Massachusetts History.* By CHARLES F. ADAMS. Boston and New York, Houghton, Mifflin & Co. — Two vols., 1067 pp.

This work consists of three studies in Massachusetts history, the subjects being the settlement of Boston Bay, the Antinomian controversy, and church and town government in Quincy. This arrangement would create the impression that the studies were disconnected, but in reality the varied subjects are woven together into a unity which is both true and impressive. We have here probably the most original and suggestive town history ever written in this country. For such the work really is — the history of the town of Quincy. It is also the work of one who is both a student and a man of letters. His wide sympathies have enabled him to keep in touch with the subject in all its phases. This is evident, whether he is treating the plans of Gorges or the new Quincy charter, the trial of Hutchinson or the temperance reform of Henry Faxon. The two volumes are distinguished by thoroughness of research and a broad and philosophic spirit. They will surely take high rank among the products of American historical scholarship.

But Mr. Adams has written what is far more than a mere town history. In his first study he traces the growth of the straggling settlements about Boston Bay till they become absorbed in the colony of Massachusetts. The pestilence which almost exterminated the Indians of the neighborhood in 1616 and 1617 and the history of the Pilgrims at Plymouth claim a share of his attention, but the real interest of the story centers in Weston's settlement at Wessagussett (later Weymouth) and the subsequent enterprise at Merry Mount, or Mount Wollaston. Though Maverick, Blackstone, Thompson and the rest of the early settlers are brought out into clear relief, the central figures on the canvas are those of Sir Ferdinando Gorges and Thomas Morton. Adopting in part the results of Mr. Baxter's recent studies, the author has given for the first time in a book which will be widely read a vivid portraiture of the old courtier and cavalier who spent his life in the vain effort to establish a royalist colony in New England. For his study of Morton, the adventurer who caused Massachusetts so much annoyance, Mr. Adams was prepared by work done some years ago in editing the *New English Canaan* for the Prince Society. He now carries the reader back to the beginning of New England history and shows with the greatest clearness how royalist and Anglican interests were in process of establishment there for a decade before Winthrop and his colonists landed. In the works of previous writers this fact has been somewhat obscured by devoting attention too exclusively to the Puritan colonization which was to be ultimately triumphant. It is reasonable also to connect Puritan aversion toward Gorges with the bad faith he showed at the trial of the first Earl of Essex. When the Puritan leaders secured the Massachusetts charter in 1629 they caught Sir Ferdinando napping. But he was a man of influence, and as soon as Boston had been settled and the exiles, thrust out by the Massachusetts government, began to return, Gorges was ready to claim his rights at court. Morton and others now became associated with him in this, the help of Archbishop Laud was obtained, and Massachusetts was forced at the outset to contend with an Anglican party which had begun to strike root in New England under the charter of 1620. After the *quo warranto* of 1635, which declared the Massachusetts charter void *ab initio*, it would probably have gone hard with the colony, had it not been for the outbreak of the Scotch war and the civil dissensions which followed in its train. These overwhelmed Gorges with disaster, while they secured for Massachusetts the opportunity for free development till the Restoration.

During this period the Puritan leaders devoted special attention to the maintenance of their system of orthodoxy, and the exercise of their influence in New England. The Antinomian controversy was typical of the life of that time. It grew out of an attack made by the clergy and reveals the intensely theological character of the times and interests. Here again Mr. Adams has given life and reality to the figure of Anne Hutchinson. He has shown also with clearness the total lack of security for personal rights in the legal procedure of the times. The magistrates were both party and judges, and the individual who opposed the general current of opinion stood as little chance of a fair hearing as if he had been tried before the Court of the Inquisition.

Mount Wollaston, a part of the later town of Quincy, was founded by Thomas Morton. There the husband of Anne Hutchinson, his brother-in-law, the Rev. John Wheelwright, received all the land. Wheelwright was acting pastor at the Mount when he became involved in the Antinomian controversy. Thus two episodes of Massachusetts history with which Morton and Wheelwright were connected form a fitting introduction to the history of Quincy. The territory in question was originally a part of Braintree. Two years after the banishment of Wheelwright a church was permanently organized. In 1640 the township of Braintree was incorporated. When in 1708 the church was divided, a North and a South Precinct appear. In 1792 the North Precinct became the town of Quincy. Meantime, within this township a number of distinguished families had grown up,—the Quincys, the Adamses and others, who have furnished many of the best examples of the New England gentry and yeomanry. Their history Mr. Adams has studied with typical of the classes to which they belonged. He has also searched the records of the town for the history of its churches, its commons, its highways and schools, its town meetings, its social life and morals. While noting as he passes the events of national history in which the distinguished residents of Quincy bore a share, his chief attention is devoted to the town itself. He shows that its early inhabitants were almost wholly of English descent, that practically all of them were farmers, that they possessed moderate means, that among them none who were very rich and few who were very poor. Except those who went to Harvard, they were all educated according to the same meagre type. They held little communication with the outside world. Thus for two hundred years their life was governed by simple customs and institutions flowed on almost without change.

Tested by modern standards it was dreary and monotonous. About 1830 came the railroad, the opening of the granite quarries, the introduction of manufacturing, the influx of an alien population. The result has been the transformation of the old New England town into the suburb and then the city. The old institutions—the church, the school, the highway, the town meeting, the militia company—have passed away, or become so changed as to be scarcely recognizable. Taken altogether, the story is a most interesting sociological study, especially that part of it which relates to the town meeting.

The earnest desire of the student must be that the work which Mr. Adams has done for his native town may find many imitators. It is only through the study of local and state histories that the real nature of our democratic society can be understood.

HERBERT L. OSGOOD.

*The Life of Thomas Paine.* By MONCURE DANIEL CONWAY.

New York and London, G. P. Putnam's Sons, 1892. — 2 vols., 8vo, xviii, 380, 489 pp.

Of all who were prominent in the great revolutionary upheaval of last century Thomas Paine is undoubtedly one of those most worthy of receiving our attention. He was a living witness of the unity of the revolution which shook both worlds. The author of *Common Sense*, that pamphlet which in January, 1776, prepared the way for the Declaration of Independence, the friend of Franklin, of Washington and of Jefferson, became sixteen years later the friend of Condorcet, of Brissot, of Gensonné, of Vergniaud, and with them, in the character of a delegate to the National Convention, drafted the first plan of a republican constitution which was submitted to that famous assembly. His chief work, *The Rights of Man*, was a formal defense of both the American and the French Declaration of Rights.

Had Paine confined his attention to the study of political science, he would probably long since have found a biographer who would have done justice to his fame. But he was a Quaker, of the philosophical sort, and soon became a bold and combative freethinker. In a pamphlet written during the Terror, when he was detained as a prisoner in the Luxemburg, he assailed the Bible with unprecedented violence, denouncing it as the work of Satan and attacking the holiest dogmas of Christianity. The *Age of Reason*, with its various continuations,



so shocked the minds of his contemporaries, especially in Europe and America, that he lost most of his former friends. When he returned to the United States nearly all doors were closed to him. Jefferson, then the first magistrate of his country, remained the faithful few, but so strong had become the current of opinion against Paine, that the president was obliged to keep him at a distance. To the generation which knew nothing of his services, "the times that tried men's souls," old Tom Paine appeared as an incarnate devil. His enemies assailed him unopposed. The sole exception of the biographical sketch which his friends drew of him, devoted to him, the lives of Paine are controversial panegyrics in which legend takes the place of fact. The statements are drawn mostly from the libels of Francis Oldys (George Canning) and James Cheetham. Of these writers, the former is suspected of having been paid by Lord Hawksbury for blackening Paine's reputation; while the latter had become a personal enemy during the last years of his life.

Mr. Conway has now undertaken to restore Thomas Paine to the place he deserves in the pantheon of the Revolution. The author's sympathy with his subject is strong, and grows as his task progresses. But this feeling, while fruitful, is responsible at the same time for the chief defect of the work. One of the features of Paine's character is that he is always self-satisfied. He never acknowledges that he is at fault. Whatever he may have done, said or thought, is well done, well said, well thought. With perfect ingenuousness he will close an argument saying: "This is my opinion . . . consistent with the reason that God has given me, and I gratefully know that he has bestowed on me a large share of that divine light." Such a character is dangerous to a sympathetic biographer, especially if he has undertaken a literary rescue. The subject of his treatment is likely to become his hero. It is so in this case. In redressing the wrongs that have been done to Paine's memory, Mr. Conway has claimed for him a position which posterity—even posterity when fully informed—will not concede to him. Paine was certainly no devil; but he was no demigod. One may have served a great cause and have been a victim of the narrowness of men, without being a Prometheus. One may have been a powerful pioneer of political emancipation, one may have fought and won in the literary battle for the rights of the people, without being entitled to be called a "father of republics." Paine, as editor of the *Pennsylvania Magazine*, formulated indeed some ideas which had not been previously form-



in America. He cannot, however, be considered as a discoverer in the sphere of political principles. The main ideas to which he lent the color of his style were born long before him in England and in the colonies which were settled by non-conformist refugees. They were the intellectual legacy from his Puritan and Quaker ancestors. Paine was a boy at Thetford School (Norfolk) when Jonathan Mayhew preached in the West Meeting-house of Boston his renowned sermon against the tyranny of kings like Charles I (February 4, 1749-50). He was still an officer of excise at Lewes (Sussex) when two friends of Mayhew, James Otis and Samuel Adams, brought forward at Faneuil Hall, amidst the applause of the people, the first declaration of the natural rights of the colonists (November 20, 1772). Democracy was already a reality in New England before Paine had thought of crossing the Atlantic. It was only about the time he departed for the New World, at the end of 1774, that he began to take an interest in politics. This is according to his own statements. Upon his arrival in Philadelphia he for the first time adopted literary pursuits as a means of livelihood, and as editor of a magazine gave utterance to the principles of a revolution which had already begun.

If the enthusiasm of Mr. Conway for his hero has sometimes led him out of the paths of calm criticism and unbiased comment, it has also carried him through a long series of painstaking researches for which every student of modern history ought to be thankful. His inquiry has been carefully conducted among English and French as well as American archives. Numerous and valuable materials have been brought to light—letters, diaries, documents of every kind. His comparison of American and French sources has produced most interesting results. Here is an instance. It was already known that Paine, being a representative in the National Convention from Pas-de-Calais, was arrested after the fall of the Girondists, and that he remained ten months in prison. The note-book of Robespierre, which was seized with his other papers on the 9th of Thermidor, contained this entry: "Demand that the decree of accusation be issued against Thomas Payne, as well for the interests of America as for those of France." Courtois, the chairman of the committee on Robespierre's papers, who made of his report to the Convention a posthumous indictment against the Jacobin leader, explained these words by saying: "Why Thomas Payne more than another? Because he helped to establish the liberty of both worlds." After a careful examination of all obtainable documents in France and in the United States, Mr. Conway has succeeded in giving the real mean-

ing of Robespierre's memorandum, *viz.* that America had no interest in Paine's arrest because it had been suggested by French leaders by Gouverneur Morris, the resident minister to the United States. Morris's desire to commit the United States to an English alliance and his jealousy of Paine's influence both in France and in America were at the bottom of the matter.

In the chapters relating to Paine's connection with the French Revolution Mr. Conway relies too much on the authority of Blanc. However important and full of information the latter's work may be, it has for its object another historical rescue, and a not very easy one, *viz.* the vindication of Robespierre. Such a book is not to be familiar to everyone who desires more than a superficial knowledge of French revolutionary history, but it ought not to be blindly followed. Depending implicitly upon Blanc's judgment, Mr. Conway sometimes ventures beyond him and reaches conclusions which the vindicator of the Jacobins himself would not have ventured to support. So it is for instance that Mr. Conway is referring to "the massacre of the Marseillaise by the king's guards," on the 10th of August, 1792. That "massacre" was the work of 800 infantry, life guards, who, with but little ammunition, stood against a multitude that was well armed and provided with artillery. Of the 800 soldiers, one-half died fighting before the palace of the Tuileries, which they had sworn to protect. Those who laid down their arms in obedience to the orders of a frightened king, were almost all slaughtered either on the spot by the mob, or soon after in the Paris prisons. The losses of those who attacked the royal residence have been fixed by M. Ternaux, after careful examination, at 74 dead and 53 wounded. The first centennial of the heroic fate of Louis XVI's last defence has recently been commemorated at Luzerne (Switzerland), and doubt Mr. Conway's high sense of truth and justice will cause him to modify his judgment respecting this event, when he reads the various contemporaneous accounts of those bloody days. These are collected in Mr. W. F. von Mülinen's memorial, *Das Französische Schweizer-Garde Regiment am 10. August, 1792* (Luzerne, 1892).

But whatever the particular shortcomings of Mr. Conway's work, it is certainly one of the most important among recent contributions to the history of revolutionary times, and it is sure to be studied with profit on both sides of the Atlantic.

CHARLES BORGEA

*Fifty Years in the Making of Australian History.* By SIR HENRY PARKES, G.C.M.G. London and New York, Longmans, Green & Co., 1891. — 8vo, xv, 679 pp. With Portraits.

A hasty glance at this bulky volume would suggest a comparison with the selection which Mr. Lane-Poole made three years ago from the papers of Sir George Bowen, under the title, *Thirty Years of Colonial Government*. The comparison would, however, be misleading. Sir George Bowen's volumes, for they were really his, dealt with a number of colonies from the standpoint of a representative of the crown, and, as was pointed out in these pages, the work sadly needed condensation. Sir Henry Parkes' book, on the other hand, deals practically with a single colony, New South Wales, from the standpoint of a representative of the people, and it would be hard to show where or how it could well be condensed. Although it abounds in selections from the author's speeches and correspondence (which show a remarkable command of forcible and generally correct English), and although it devotes page after page to matters that can hardly be said to have other than local importance, it would be difficult to name a book of its kind that possesses such general interest or conveys so much valuable information.

Perhaps much of its interest is derived from the personality of Sir Henry Parkes himself. It is true that the veteran statesman is scrupulously reticent as to the facts of his private life, and that he endeavors to give as far as possible an impersonal view of the legislation he describes in such detail. But the rugged independence, the sterling sincerity of conviction, the wide-reaching knowledge and the masterful self-assertion that have made him, next to Sir John Macdonald, the greatest statesman the English colonies have produced in our generation, could not be prevented from inspiring this volume and making it in every sense a notable political autobiography.

We learn, inferentially, that Henry Parkes was born about the year 1815, that he emigrated with a wife and child to New South Wales in 1839, and that for many years he had a hard struggle to support himself. It was eleven years before his ability became widely known or he himself ventured to make a speech in public. It was fifteen years before he was elected to represent Sydney in the old Legislative Council, two years before the grant of responsible government to the colony. He was offered a post in the first ministry, but preferred to edit a newspaper, which nearly ruined

him financially, and to work as a simple member of the leg for popular and liberal reforms. His first office was that of commissioner of emigration in England—a position which brought him in contact with men like Bright and Cobden and Gladstone. Turning to the colony, he accepted the post of colonial secretary in the Martin ministry of 1866. In this capacity he distinguished himself by carrying through the Public Schools Act of 1866, by the development of the colonial hospitals, and by his active measures against the bushrangers, but he was severely, and it would seem unjustly, criticized on account of the disturbances caused by the attempted assassination of the Duke of Edinburgh. In 1871 he formed his first ministry, and since then he has held the office of premier four times, having been in office eleven years, nine months and fourteen days, out of a total of thirty years. His course has been that of a consistent free-trader, an advocate of Australian federation, a preserver of the strictest forms of parliamentary government, and a loyal upholder of the integrity of the British Empire. He has legislated with great success, although not without violent controversy on the public school question, which excites the Roman Catholics in Australia as much as it does in this country, on the liquor question, on the state ownership of railroads, and on the proposition of Australasia. One of the most interesting chapters in the book is devoted to the last named topic.

The above brief analysis of Sir Henry's career will indicate the character and importance of the information that may be obtained from his pages. His autobiography will be indispensable to students of Australian history and highly valuable to students of comparative politics. Indeed, it may be doubted whether its chief value does not lie in the flood of light it throws upon the working of the parliamentary system of responsible ministers when transplanted from its English birthplace. For this reason it will scarcely be a work of supererogation to recommend the volume to the small but hardy band of students who are urging us to remodel our constitution along English lines.

It should not be overlooked that this book has a literary value that will interest some readers. Sir Henry Parkes is a poet himself, but as Sir Charles Dilke says, "his debts, his poetry, are too many to sink him." His poetical proclivities may account in part, however, for his friendship with Browning and Tennyson and his admiration for Carlyle. Several letters from the latter are preserved, as well as a characteristic utterance with regard to our literature, which I do not remember to have seen in print before.

The book has been well printed, but on pages 353-54 and in the index, which is well done, Governor *Cornell* appears as *Carnell*. The photogravure of the author which serves as a frontispiece is a welcome suggestion of the rugged, masterful character self-delineated in the pages that follow.

W. P. TRENT.

*Introduzione allo Studio dell' Economia Politica.* Di LUIGI COSSA. 3<sup>a</sup> edizione, interamente rifatta, della Guida allo Studio dell' Economia Politica. Milano, Hoepli, 1892. —xiv, 594 pp.

The name of Luigi Cossa on the title page of a book is in itself a eulogy. A whole phalanx of young economists recognize him as master. His *Elements of Economics and Finance* has had an exceedingly great and deserved success, as well as the rare honor of translation into nine languages. The present work, which is called the third edition of the *Guide to the Study of Political Economy*, is in reality an entirely new work. In it we notice Cossa's special gifts — great lucidity, precision and sobriety of thought and exposition, judicial impartiality, and above all an erudition that is profound without being either heavy or dry.

As in the preceding editions, the present volume is divided into two parts, theoretical and historical. In the first part the chapter on method is thoroughly revised, and a new chapter is added, on the character of political economy. In this latter the author traces the general lines of scientific classification and the limits of science and art. He refuses to follow the sociologists in considering economics as a physical and biological science, and he regards the analogies between the animal and the social organism as merely apparent. But at the same time he does not approve of the tendency of the recent Austrian school, which considers economics as an appendage of psychology, or mathematical psychics. And without denying the importance of the so-called hedonistic principle, he maintains that the subjective theory of utility and value is by no means the whole of economics, nor the pivot on which everything moves.

As to method, the essence of the question, as put by Cossa, lies in the limits to be assigned to induction and deduction. The great masters of the science, although disagreeing in the theory, have been at one in applying to practical questions the most

suitable method. The classical economists based themselves on observation of certain fundamental premises, from which they deduced their theory of value and of distribution. These premises, as he observes, are secure enough; but besides the constant causes there are accidental and variable causes, which necessitate a qualification of the original deductions. We must revert to the inductive method, according to Cossa, not alone to verify the truth of the laws obtained deductively, but also to verify the existence of the disturbing causes, and to ascertain the empirical laws of variation. In this way the inductive method may sometimes be used in part to discover the laws of certain economic phenomena; on the other hand the complexity of social phenomena often precludes direct investigation of causes through observation alone. Regarding, then, the value and importance of historical research, Cossa declares himself opposed to the exclusively historical method, and to the conception of national economics, as apart from the existence of an absolute truth in pure science. He declares that if the historical school has aided science indirectly, and especially by promoting the study of economic history, it has not succeeded in making any important innovations in the fundamental principles of social economics.

If I were permitted to criticize our illustrious teacher, I should say that however true the last observation may be, his general conclusion as to the historical school seems a little too severe, and he assigns too little importance to induction. But the present review is designed rather for exposition than for criticism.

The second part of the volume, which the author modestly calls a mere summary of the external history of political economy, is in fact far more than that. It is a complete history, which surpasses all of the existing works of the kind, and which, because of its breadth of mindedness, its erudition and its wealth of bibliographical references, will be regarded as an authority.

In the first edition the author devoted two chapters to ancient and mediæval times, and then followed with five chapters on the sixteenth, seventeenth and eighteenth centuries, with two special chapters on the mercantile and physiocratic systems. In the present work the author divides the history more logically into four periods: first, "The Fragmentary Epoch," including the period of the 17th century; second, "The Period of the Empirical Systems and Monographs" (to the middle of the eighteenth century); third, "The Period of the Scientific Systems;" and fourth, "The Contemporaneous Period."

It is manifestly impossible to give a *résumé* of a work of this kind, and I therefore limit myself to noting a few parts which seem especially interesting, and which contain something distinct from the preceding editions. Thus in his account of the scholastic theories the author follows from a new point of view the gradual evolution of mediæval ideas, finding in the doctrine of reasonable price the germs of the modern theory of value, and in the canonic prohibition of usury the chief manifestation of the doctrine. While presenting a good survey of the general trend of the movement, the author also gives here and there exceedingly full and precise bibliographical notes. This is the case not only with the scholastic and humanistic writers, but also with a large number of less well known authors of special monographs, who preceded the period of scientific systems.

Under the heading, "The Period of Empirical Systems," Cossa first studies the system which grew out of the attempt to follow the consumers' policy, and to procure the necessary supply of wheat. Of greater importance was the mercantile system. After illustrating the fundamental ideas of mercantilism, Cossa divides its history into three periods: first, that of the prohibition of export of money; second, that of the balance-of-bargain system; and finally the period of the balance of trade. In the subsequent period the mercantile system transformed itself into the protective system, finding in the balance of trade no longer the end but the symptom of economic prosperity, and looking especially to the development of a commerce and industry. The critical comments of the author are often profound, and yet he might, perhaps, have devoted a little more attention to the historical conditions amid which the theories arise, and which give each a partial historical justification.

As a reaction against mercantilism, arose the system of agrarian protection which gave the impulse to the physiocratic movement. The author calls attention to a series of seventeenth century writers who are not very well known, and tries to show their historical importance. But the merit of having created a really scientific system of economics is due of course, to Quesnay and the physiocrats. Cossa shows the importance and the defects of the school. He calls attention to the difference between the economic liberty of the physiocrats and that of modern economists, the lack of all historical insight on the part of the former, their one-sidedness in regarding the interests of the producer exclusively, and their mistake in erecting into a scientific dogma the tenet of *laissez faire*. With the



physiocrats begins the scientific structure elaborated by Adam Smith and his immediate followers, whose work Cossa sketches in outline but with a sure hand.

Up to this point we have surveyed scarcely half of the history of the part of the work. It would be manifestly impossible to survey the remainder of the history in detail. Cossa sketches the development and present condition of economics, in the various countries of Europe, as well as in America. The wealth of bibliographical notices shows a most remarkable acquaintance with the contemporary economic movement. Chapters like those on the Scandinavian countries, the Scandinavian countries, Finland, Bohemia, Poland, Russia are especially valuable because they are rich in information which it will be impossible to find in any other work. A chapter on the United States, which is entirely new, contains an ample account of the leading writers, that few of the American economists themselves would find much to change or add.

It might be regretted that the author did not add to his account of the condition of economics in the various countries, an account of the general characteristics of the science in recent years. But this lack the reader can easily supply for himself after having gone through the pages of this learned work. Its publication marks a real epoch in the science, and it is safe to predict that it will be translated into pretty much every civilized language. An English edition will be published shortly by Macmillan.

UGO RABINOVICH

*Prezzi Ideali e Prezzi Effettivi.* By Prof. GIACOMO LUZZATTI. Milan, Ulrico Hoepli, 1892. — 221 pp.

It was long ago said of the Italians that they have given the world the best writings that we have on the subject of economics. Whether or not this is true to-day, the work before us is a convincing proof that they can still furnish the world with original and valuable thought in this department of economic science. The title of Professor Luzzatti's work is: *Ideal and Effective Prices. Notes of Study upon the Value of Money in the Economy of a Nation.* There is no division into chapters or sub-headings, but the points discussed may be grouped under the following heads: the origin of crises, and their relation to prices and to the money market; the relation of prices to the quantity of metallic money; the nature of discount and interest, and their relation to prices; the metallic (money) reserve; the value of money in relation



cost and to its quantity; and finally, historical illustrations of the theory set forth. The text itself occupies only about one-half of the book, the other half consisting of notes which are largely critical, but which on the whole form a valuable supplement that frequently helps to elucidate the text. Of the text about three-fourths is devoted to a deductive, or theoretical, and one-fourth to an inductive, or practical, treatment of the subject. The theoretical discussion is very concise and almost wholly abstract, being seldom illuminated by concrete examples. Although the discussion of the various questions involved is brief, it is very suggestive and evinces a profound study of monetary science.

It will be impossible within the limits of a review to give any adequate account of Professor Luzzatti's arguments, but we may perhaps best indicate his own position, and at the same time the general scope of the book, by saying that it is virtually a strictly scientific refutation of the quantitative theory of money value, which appears so self-evident and axiomatic to Mr. Giffen. Granting his premises, Professor Luzzatti's conclusions follow by a logical necessity. But whether we agree with him or not, he has at least shown us that Mr. Giffen has by no means said the last word upon this subject, and that the question is not so easily solved as he had imagined. That our author's treatment of the question should be complete or exhaustive, could not well be expected in mere "Notes of Study," and we find it especially lacking in concrete examples taken from modern industrial life.

The theoretical treatment, though condensed, is more satisfactory. Its fundamental presupposition is the reality of the ideal, as the ultimate cause, or determining force, in economic life. More definitely, it is that values, or ratios of exchange of commodities, are estimated by means of an "ideal monetary unit"—the *tertium aestimationis*; that upon the basis of this ideality, ideal prices are determined according to the complex social wealth and reproductive force of society, "the movement of prices, other things being equal, following the movement of complex social wealth." And since it is the tendency of social wealth to increase, so also is it the tendency of ideal prices to rise, there being no doubt in the mind of our author "that the increase in social wealth is the prime cause, or at least the *sine qua non*, of a tendency of prices to rise."

It is important to note that it is not the wealth actually existing at any given time, not the being (*l'essere*), but the becoming (*il divenire*) of the complex social wealth that influences the movement of prices.

In other words it is the "productive energy," the "reproductive force," stimulated by ideal prices in view of prospective profits. Upon these ideal prices depend the whole movement of trade, the quantity and value of money.

Opposed to ideal are effective prices, or the money prices by which exchanges are effected. Their tendency is always to decrease when they are low or high according as ideal prices are high or low. It is these effective prices that stand in most immediate connection with and dependence on quantity of money, but

cost and quantity can have no influence upon effective prices except in the same measure in which ideal prices, in order to be effective, demand a certain price a greater or less quantity of money. The quantity of money in excess of the demand does not enter into circulation and so cannot influence upon the prices. [Page 62.]

According to Professor Luzzatti it is one of the errors of the qualitative, or quantitative theory, that the use of precious metals as a medium of exchange is confounded with their use as money, and both uses are considered as having the same effect on prices. Another error, frequently reiterated, is that effect is taken for cause, and our author despairing of political economy ever becoming more than an art unless economic science will go beyond proximate, and search for ultimate causes. The sequence is not quantity, value, price; but ideal price (in view of prospective profits), value, quantity, effective price. It is ideal prices that determine value, and therefore regulate interest; while disordered results from effective prices.

That part of the book which has perhaps the most general interest is Professor Luzzatti's account of the development of crises, and the evil of an excessive concentration of wealth is pointed out. Without attempting to substantiate this part of his thesis by concrete facts, he briefly outlines the process by which he conceives the concentration of wealth to take place, and shows that it is always attended by a comparative want or misery in the many, and leads to a physiological deterioration that is detrimental to the productive energy of society. The result of the concentration is low ideal and high effective prices, which leads to a new frenzied speculation, with its concomitant "excessive over-production" leading to an excessive under-consumption, because of the excessive concentration of wealth and the consequent lack of purchasers. The most healthy condition is when there is a more equal distribution of wealth, with high ideal and low effective prices.

STEPHEN F. WEST

*The Theory of Wages, and its Application to the Eight-Hours Question and Other Labor Problems.* By HERBERT M. THOMPSON, M.A. New York, Macmillan & Co., 1892. — 140 pp.

This is a welcome addition to the literature of economic theory. It deals quite generally with problems of distribution, in a way that will carry readers nearer to a full understanding of those problems. The author's modest statement that the work contains little that is original is true only if terms be used in a rigorous sense. Much of the intellectual raw material of the discussion exists somewhere, in some form; but the new mode of combining and using it gives to the book an independent character. There is new and valuable logic in the work.

All incomes are said to come from a social dividend. This total amount is variable, and different incomes are variable fractions of it. An influence that affects the fraction of the social income represented by wages will also make that total income larger or smaller. The four general shares of the dividend are rent, wages, interest and profit; and each of them is subjected to influences that change the ratio that it bears to the others, and change, at the same time, the sum total of the four.

The influence on the ratio of division may, in the case of a particular kind of income, work in a way that is opposite to the effect realized in the social income. Wages, for instance, may constitute a smaller fraction of the total gains of society than heretofore, but the total gains may be larger. Again, both the aggregate income and the laborers' share of it may be increased. In the former case there would be one influence diminishing a laborer's pay and another increasing it; while in the latter case, both influences would increase it. The various combinations that, in the author's view, the influences affecting different incomes may take, are presented at the end of the volume.

Corollaries of the wage-fund theory are refuted in one chapter, and in another it is shown that no one of the four shares of the general income of society can properly be treated as residual. We cannot treat any three of them as determined by independent laws, and assign to the fourth one the leavings. The relation of rent to price is treated in a way that reveals the confused use of terms and the fallacious logic that characterized the classical treatment of this subject.

JOHN B. CLARK.

*Economic Legislation of all the States: the Law of Incorporation of Companies Operating under Municipal Franchises.* By ALLEN FOOTE. Charles E. Everett, A.M., LL.B., Editing Attorney resident attorney in each state as co-editor. Volume I. Clarke and Co. — 8vo., 258 pp.

Between the individual and the state there are thrusting the intermediate powers, namely, corporations. A network of organizations is gathering to itself an increasing proportion of the industry, and even does much governing. Ownership of land is not sovereignty over dwellers upon it; but the early Germanic societies found that ownership was essential to sovereignty. Whoever owned the land governed the people. In modern times more than ever, owning is needed to enable a person to do this. The earth and the things thereon that aid production may be grouped under the comprehensive name, capital; and to own all this is to possess the undoubted power of governing. The traditional fear of democracy is based on the impression that it puts too much power to dispose of wealth into the hands of empty-handed men. The growing demand for the type of government that we actually have is based on the impression that it puts too much power to dispose of men in the hands of soulless wealth. The corporation as a political and economic power presents essentially new and vast problems for solution.

One basis for a solution of these problems is afforded by a knowledge of the actual laws of corporations in the different states. Mr. Foote has undertaken, with the aid of co-editors, to collect and analyze the laws affecting all companies holding municipal franchises. This is a work of great utility. If it be true, as has been asserted, that the chief evils concerning corporations are, in the United States, responsive to legal remedy, much of the evil that these agents accomplish, such a work as this one now undertaken will reveal the fact.

A preliminary volume is now issued — the work of Mr. Foote contains a statement of very general economic principles, leading to a summary of what, as the author believes, are the principles that should govern the relation of the state and the municipal corporations. A corresponding legal discussion occupies the remainder of the volume.

This volume contains, of course, the controvertible part of the work. Some of the more general statements are so debatable and controvertible that they cannot add to the effectiveness of the

compilation that is to occupy the later volumes. "Man is not a true sovereign" but is "controlled by natural laws"; "legal enactments are man-made; they are not true sovereign laws"; "self-interest is the only power that should sway the actions of men": such are a few of those statements. A generous interpretation of language, which brings out the author's real meaning, diminishes the objection that one feels to some of these propositions; but there remains the fact that the general theories advanced are less in harmony with the views of most readers than are the theories that specifically concern corporations. If some of this preliminary matter were omitted, the essential part of the work would have a better chance of winning acceptance.

The actual policy advocated is interesting. Let a city give away valuable franchises for nothing; but let it recoup itself by securing good and cheap service and a share of the profits of the business carried on. Secure publicity of accounts, and honest and efficient management. Let the share-holders have a fair interest on the cost of their plant and other capital. Divide surplus earnings into two equal shares, giving one of these to the city, and subdividing the remainder, on an equitable plan, between the capitalists and the hired laborers of the corporations.

J. B. CLARK.

*Erbrechtsreform und Erbschaftssteuer.* Ein Beitrag zum Bürgerlichen Gesetzbuch und zur Steuerreform. Von A. ESCHENBACH. Berlin, Carl Heymanns Verlag, 1891. — viii, 104 pp.

Eschenbach's article on the inheritance tax (*Erbschaftssteuer*) in the *Handwörterbuch der Staatswissenschaften* contains in a condensed form the substance of this monograph. For most purposes the condensation will be found quite sufficient; but it treats very briefly of the general subject of inheritance, which in the longer work occupies a chapter of twenty-seven pages entitled: "*Erbrecht, Familie und Staat.*" The author distinguishes clearly between state inheritance (*staatliches Erbrecht*) and the limitation of private inheritance, — a distinction which some German writers have failed to observe. He shows that inheritance by the state is a logical impossibility, and characterizes the conception as "juristic, ethical and economic nonsense." He would limit intestate inheritance to four or five degrees of relationship, making it co-extensive with the family consciousness and the duty of support, — an idea so generally approved by writers on the

subject, and withal so consonant with common sense, that it is strange that it has not had more influence on legislation. He is with much reason that if a man has no relatives nearer than his cousins, he is practically alone in the world, and there is no law for intestate inheritance in such a case; if there is no will, the state should take possession of the property, not because of any right of inheritance, but in order to prevent the confusion which would result if valuable property were left to be seized by individuals. The author accepts the substance of what has often been called *stillschweigende Erbbrucht*, while very properly refusing to call it by that name.

Mr. Eschenbach discusses the inheritance tax quite independently of any theory of the limitation of inheritance, and finds that it possesses the unusual advantage of being justifiable either as a tax or as a contribution. He rejects the theory which regards it as a tax on accidental or extraordinary income, simply because he cannot include inheritance in the definition of income which he accepts. He prefers to consider the inheritance tax as supplementary to those taxes which are evaded by the owners of property during their lives, and as necessary to make the tax system as a whole accord in some degree with the principle of faculty, where other taxes are on income and expenditure rather than on property. At the same time, he accepts the theory which regards the tax as a payment for a special service on the part of the state, but he does not distinguish clearly between the value and the cost of the service. He also compares the state to a silent partner in the business of each citizen, and argues that each is entitled to a share of the capital on the dissolution of the partnership by death.

The author is thoroughly in favor of progressive taxation, especially as applied to the inheritance tax. Having rejected the accidental income theory, and failing to apply his ideas on the limitation of inheritance to the inheritance tax, he can find no theoretical justification for graduation according to relationship; yet he concludes that there must be some justification for it, because it is well nigh universal in practice.

The treatment of the subject is almost entirely theoretical, and is not fitted for a single historical and descriptive chapter, which is too general to be of much value. The author's arguments, though not in all cases conclusive, are always suggestive. An interesting feature of the work, in view of the recently proposed changes in the Prussian inheritance tax, is an appendix consisting of newspaper clippings on the subject.

MAX V



*Das Internationale Währungsproblem und dessen Lösung.* Von THEODOR HERTZKA. Leipsic, Duncker und Humblot, 1892. — 136 pp.

*Die Zukunft des Silbers.* Von EDWARD SUESS. Vienna and Leipsic, Braumüller, 1892. — 227 pp.

The author of the first of these volumes is well known to the student of economics as a brilliant writer and an original thinker. Three years ago he gave to the public a scheme of social reform in a description of *Freiland*, which has had in Germany the same sort of success that Mr. Bellamy's *Looking Backward* has had in the United States. Mr. Hertzka had a happy faith that his simple scheme of communities practising universal coöperative production would solve all the difficulties of the social problem and bring happiness to humanity. A similar happy faith in the possibility of devising easy solutions to difficult problems is seen in the volume now before us. Mr. Hertzka here tries his hand at the troublesome bimetallic question. He remarks in his preface that simple ideas are oftenest those which fail to get ready acceptance, and that he is prepared for bitter opposition to his solution of the question in hand. Nevertheless, he has no doubt that it will be accepted at a comparatively early date, since he sees in it the only means of warding off the dangers which beset the civilized world from the condition of its money. His remedy is certainly a simple one — not international bimetallism, but the creation of a new money metal, consisting partly of silver and partly of gold. Hereafter the standard of value is to be neither silver nor gold, but an alloy of a certain proportion of silver and a certain proportion of gold. He suggests nine parts of silver to one part of gold; but the particular figures are immaterial. All the civilized countries are to come to an international agreement, by which a mixture containing the same proportion of gold and silver is to become the material from which coins shall be struck. Each country is to strike its coins in such manner as it sees fit, and to fix their relations to existing coins as it may see fit. In this way the new Columbus puts his egg on end.

The effects of a measure of this sort present a very pretty problem, and may be commended to those who enjoy the dialectic exercise of working out the results of novel premises. For practical purposes it is hardly more valuable as a solution of the monetary question than was the scheme of *Freiland* as a solution of the social

question. If international bimetallism is impracticable, now to be agreed on all hands, this scheme is even more so.

Dr. Suess's book on *The Future of Silver* may be regarded as a continuation of his volume on *The Future of Gold*, published in 1890. The main conclusions of the two volumes are the same. Dr. Suess believes that the future production of gold is likely to decline, or at least not to increase, and that the supply of gold will not suffice to meet the needs of civilized communities. The production of silver, on the other hand, he thinks will increase in the future at a more rapid rate than the history of the last twenty years would indicate. There has been a great rise in the production of silver since 1870 he ascribes to the succession of lucky finds—discoveries of rich pockets of silver in exhausted and not likely to recur. There are, on the other hand, more permanent sources of silver, especially in Mexico and the United States, from which a steady and regular increase of production may be expected. The result of these conditions, he believes, will be that silver, which alone promises a growing supply adequate to meet the development of trade, will eventually become the standard metal. Any form of bimetallism is only a step of transition toward the eventual result. Silver is the money of the future.

To discuss this reasoning would require a consideration of the whole bimetallic controversy, for which this is not the place. Even those who would not accept Dr. Suess's conclusions, however, with interest his chapters on the modes of occurrence and production of the precious metals and of copper, on the "bonanzas," and on the relative position of gold- and silver-using countries. Dr. Suess's eminence as a geologist gives weight to his statements; and a grace of style not common to German men of science makes his volume doubly interesting.

The obvious answer to the allegation of an insufficient supply of gold is that the extended use of credit machinery steadily diminishes the resort to actual coin, and Dr. Suess may err in assuming that the supply of gold will not suffice even as a basis for a well-developed credit system. Similarly it is at least a debatable question whether in fact the gold-using countries already suffer from a scarcity of the metal, and whether the general decline in the value of gold during the last twenty years is or is not an evil. Meanwhile it is certain that in the immediate future the drift is toward gold and toward silver. Whatever geological time may bring, there is no indication to indicate that in the historical future silver will succeed in replacing gold as the money of the civilized world.

F. W. TA



*Complete Guide to the World's Twenty-nine Metal Monetary Systems.* By JOHN HENRY NORMAN. New York, G. P. Putnam's Sons. — 328 pp.

The author's name appears but once upon the title page of this work ; but such self-suppression is not maintained in many of the pages that follow. Mr. Norman holds in low esteem most other writers upon currency, but devotes page after page to quoting what he himself has at various times written upon the subject. He modestly states that he writes his book "to assist men, statesmen, legislators, political economists and all teachers of the subject of money to obtain the necessary knowledge their respective positions call upon them to possess." What these men need, he complains, is a "masterly skill in bullion and coin," and he informs us that he "has been told" that such skill could be obtained by studying two of his own books.

The chief thought of the book is expressed with characteristic clearness in the following sentence :

Norman's unit of weight system consists of using the signs for one gram or one troy grain of pure gold and pure silver, or the lowest unit composing the weight of each country to the fourth and sixth decimal point, as a multiplier or divisor of any sign for pure gold and silver in any country to ascertain the weight of the same in the country using the sign.

In preparing these signs the author has, with infinite patience, worked out tables giving the absolute weight and the relative weight of all the coins of all the civilized and semi-civilized nations of the globe. These tables have a certain scientific value — enough, perhaps, to entitle the work to a brief notice.

CHARLES B. SPAHR.

*The Science of International Law.* By THOMAS ALFRED WALKER, M.A., LL.M., of the Middle Temple, Fellow and Lecturer of Peterhouse, Cambridge. London, C. J. Clay & Sons, 1893. — xvi, 544 pp.

Among modern works on jurisprudence there is none that has exerted a more powerful influence on the elementary conceptions of English and American students of law than that of Austin. For this fact there is a reason apart from what Mr. Walker appropriately

describes as "the sustained and serried logic, and masterly argument" of Austin's great treatise. It was Austin's to produce a definition of law so rigid and exact as to desire for an absolute and ready test of legal conception he enforced it with a power of analysis and reasoning equalled. And although it has been shown that his is at variance with the facts in regard to the development and that his limitation of proper legal rules to commands by a superior power denies the quality of law to a part of the rules that have governed the relations of men to one another, yet we constantly hear his dogmas reiterated with assurance as if they had never been impugned.

Mr. Walker wisely concedes that if we exclude from the law all rules of conduct that do not fall within Austin's notion of proper laws, there is no such thing as international law, still less a "science of international law." These conclusions, however, Mr. Walker ably combats, both on historical and philosophical grounds and on the authority of jurists. He is disposed to take more seriously than did his master, the late Sir Henry Maine, Austin's criticisms of international law as "international nonsense." Maine pronounced those criticisms to be "very interesting, but quite innocuous." But, says Mr. Walker, "when they pass from the schools into the cabinet, and into the public ears of responsible foreign ministers, then for the sake of [the] grammatical squeamishness, the peace of the world is in jeopardy." I am disposed to agree with Mr. Walker, inasmuch as a large proportion of our law students are indoctrinated in the Austinian theory, which excludes from the sphere of law everything but a certain variety of municipal law, a refusal to admit that theory will not be out of place.

Mr. Walker treats of international law under two divisions, "Normal International Law" and "Abnormal International Law." The former relates to international law in time of peace; the latter to international law in time of war. It is evident from this classification that Mr. Walker belongs to the school of philosophers who regard peace, not war, as the normal condition of mankind. The abnormality is in the condition to which the law is applied, not in the law itself. It may, therefore, be suggested, though the meaning is clear enough, whether it is quite accurate to say that the law is abnormal because it relates to an abnormal condition. Homicide creates an abnormal condition, yet it might seem

to call the law relating to homicide abnormal law. But the distinction which Mr. Walker's terminology is intended to denote is a proper and useful one, and is clearly brought out in the text.

Mr. Walker's discussion of the subject of neutrality is very full and very satisfactory. His tracing of the development of the principle of "free ships, free goods" is excellent, though he appears to lean towards the old doctrine, so long enforced by Great Britain, that the fate of the goods is to be determined by the hostile or the neutral character of the owner, whether they be found in a neutral or an enemy ship. But of special interest is his exposition of the controversy between the United States and Great Britain, growing out of the failure of the latter to perform her duties as a neutral in the case of the *Alabama* and other Confederate cruisers. The recent disclosures of Sir Henry James, tending to show that the escape of the *Alabama* was the result of an accident, and that the British authorities were at the time not without a sense of culpability for the incident, only add force to the opinion Mr. Walker has expressed on the facts previously known.

As early as June 23, 1862, Mr. Adams, then minister of the United States in London, apprised the British government that a war steamer was preparing at Liverpool for departure; that the persons engaged in her preparation were well-known Confederate agents; and that her commander was to be a person in the Confederate service. The law officers of the crown advised prompt action. The customs authorities, however, though admitting that the vessel was intended for use as a man-of-war, reported against seizure, unless stronger inculpatory evidence should be adduced. Subsequently, on the 21st of July, the consul of the United States at Liverpool laid before the collector six depositions, setting forth in the clearest manner facts to establish a violation of the law, and again requested the seizure of the vessel. "The inaction of the authorities under the circumstances," says Mr. Walker, "must seem to the unprejudiced eye little short of marvellous." Even after the 21st of July further inculpatory evidence was produced on the part of the United States, and on the 29th the law officers, being again consulted, recommended seizure without loss of time. On the same day the vessel, then known as "No. 290," steamed down the Mersey as for a trial trip. On the following day she lay for several hours on the Anglesey coast, and took on board a number of men brought out from Liverpool on a steam-tug.

And then [says Mr. Walker] the British authorities awoken to futile activity. Instructions were fired off in all directions without effect. . . . Meanwhile "No. 290" made her way unarmed. There she was met by two British vessels . . . which had proceeded from London and Liverpool, . . . and from these vessels she was ordered to leave Portuguese waters her guns and ammunition. Captain Walker publicly announced to his crew the character of the vessel, and she was ordered to enlist under the Confederate flag. Nearly fifty men at once refused to proceed further, and accordingly returned home. . . . Others, among them being several men of the British Royal Naval Reserve, accepted their lot with the shortly notorious "Alabama." The vessel thus auspiciously began in a combination of supineness, fraud, and subsequently appeared in various British ports, and in accordance with the British view of international law, received the status of a belligerent ship of war.

On the somewhat difficult question of the right of intervention on behalf of private claimants, Mr. Walker's treatise is distinguished by precision and less definiteness of opinion than in the case of most other subjects.

English statesmen [he says] lay down very correct principles of the legitimate sphere of intervention; but English merchants need to be reminded that suretyship of rash speculation is not, and cannot be, a regular function of the British government.

To point this observation he refers to the claim of the capitalists interested in the Delagoa Bay Railway against the Portuguese government for its seizure and confiscation of their property.

The investors [says Mr. Walker] have been undoubtedly treated with the utmost harshness; the conduct of the Portuguese government and doubtless is, entirely and absolutely unjustifiable. But what is to be sought? Clearly, from the lords of the territory, the satisfaction of the government. The hapless British speculators of course they do more. They cry for the interference of the all-powerful government. Are they entitled to it? Lord Palmerston was whose British sympathies were beyond dispute; but he would give no unhesitating answer.

Mr. Walker then cites a well-known passage in which Lord Palmerston takes the ground that intervention in behalf of private claimants is a matter of discretion, and infers that the British government would have refused to intervene. The passage quoted

Walker is constantly cited in support of all sorts of private claims, for the very reason that it treats intervention in such cases purely as a matter of discretion. Lord Palmerston in practice exercised a very wide discretion. Nor does Mr. Walker notice the fact that the Portuguese government finally accepted the intervention of Great Britain and the United States, the latter government also being interested, in behalf of the Delagoa Bay Railway claimants, and that the case is now pending before arbitrators at Berne, who are to ascertain the compensation due to those claimants.

On the whole Mr. Walker's treatise is a meritorious work. It exhibits intelligence and care, and a far greater degree of personal investigation than is usually found in books on international law primarily designed for the use of students. Such books too often contain nothing beyond a summary of the results of other men's investigations, with an admixture of moral reflections evolved from the author's inner consciousness and of no special value. Mr. Walker has set for himself a higher standard.

JOHN BASSETT MOORE.

*Zeitschrift für Litteratur und Geschichte der Staatswissenschaften.* Erster Band, Erstes Heft. Leipzig, Verlag von C. L. Hirschfeld, 1893. — 120 pp.

*Zeitschrift für Social- und Wirthschaftsgeschichte.* Erster Band, Erstes Heft. Freiburg i. B. und Leipzig, Verlag von J. C. B. Mohr, 1893. — 153 pp.

The list of scientific periodicals in political economy grows appalling, and even the specialist may well despair of being able to keep *au courant* of their contents. Yet the very fact of this rapid multiplication is the best evidence of the growing interest in the science and of the increasing number of its students. The two new German journals propose to cultivate fields to which, it is claimed, not sufficient attention has been paid. The one is to deal primarily with economic history; the other primarily with the history of economics. The one will pay attention chiefly to the evolution of institutions, the other to the evolution of ideas. Because of the influence of economic ideas and economic institutions on each other, the two reviews will therefore supplement each other.

The *Zeitschrift für Litteratur und Geschichte der Staatswissenschaften* is edited by Dr. Kuno Frankenstein of Berlin, who has associated with himself as an editorial committee seventeen well known econo-



mists from most of the European countries, including Holland, Spain and Russia, as well as Germany, France, Switzerland and Great Britain. The three leading articles in the opening number are a contribution to the history of Socialism by Prof. Dietzel—the first of a series of articles,—a study of the Physiocratic system, by Professor Oncken, and an account of Loria's new theories by Professor Rabbeno, the substance of which has already appeared in the *POLITICAL SCIENCE QUARTERLY*. The other features of the journal are a goodly number of reviews, undertaken by the editors in the separate countries, and a very full bibliography.

The *Zeitschrift für Social- und Wirthschaftsgeschichte* is edited by Dr. Stephen Bauer of Brünn, in conjunction with three other writers and with a select list of contributors from all over Europe and America. The editor is favorably known to English readers as the author of the elaborate article on Barbon, and of some interesting historical articles in Mr. Inglis-Palgrave's *Dictionary of Political Economy*. The first number of the journal makes a very favorable impression and contains a number of remarkable articles, among which would have sufficed to give reputation to the issue. The leading articles are on "The Homeric Village Community," by Prof. Pöhlmann; the "Administration of the Papal Domain under Gregory I," by Prof. Theodor Mommsen; the "Regulation of the Apprentice System by the Customary Law of London," by Mr. Cunningham; and "Economy and its Concrete Conditions," by Prof. Brentano. In the last article Prof. Brentano seeks to lay the basis for the evolution of economic life out of the family, and discusses the recent theories of primitive law and custom from an economic standpoint. His conclusions are in substantial agreement with those of Westermarck, in his *History of Human Marriage*, against the advocates of the clan theory. But the interest of the paper—which is to be followed by a second paper—lies in the economic explanation given of mother-right and other primitive institutions. The journal closes with a note by a Frenchman (Fabre) on the population of England under Henry II. In the next issue we are promised a number of reviews of books and articles on economic history. If the quality of the first number is kept up in the succeeding issues, the *Zeitschrift für Social- und Wirthschaftsgeschichte* will undoubtedly take rank with the half-dozen journals which an economist, no matter what his nationality, is obliged to read.

E. R.

## RECORD OF POLITICAL EVENTS.

[From November 1, 1892, to May 1, 1893.]

### I. THE UNITED STATES.

#### I. NATIONAL AFFAIRS.

**FOREIGN RELATIONS.**—Most conspicuous under this head has been the question of **Hawaiian annexation**. A revolution in the government of the Hawaiian Islands was precipitated by the attempt of Queen Liliuokalani, January 14, to promulgate, against the advice of her cabinet, a new constitution, restoring to the crown and to the native element in the population political powers which had been given up under the constitution of July 7, 1887. The resistance of the ministers thwarted the Queen's purpose, but the foreign element in Honolulu, embracing the leading professional and business classes, roused by the attempt, organized a committee of safety, which on the 17th proclaimed the abrogation of the monarchy, and the establishment of a provisional government to control affairs "until terms of union with the United States of America have been negotiated and agreed upon." In the meantime, on the 16th, a detachment of troops from the United States cruiser *Boston* was landed. The queen, assuming that this force had been landed to support the provisional government, submitted under protest, and the United States minister, followed by the other foreign diplomats, thereupon recognized the provisional organization as the government *de facto*. Five commissioners were immediately despatched to the United States to negotiate annexation, and were received by the State Department at Washington February 4. Two envoys sent by the queen to present her case to the government only reached Washington February 17, after the treaty of annexation was before the Senate. On February 1 Mr. Stevens, the United States minister at Honolulu, at the request of the provisional government, assumed in the name of the United States "protection of the Hawaiian Islands, for the protection of life and property, . . . but not interfering with the administration of public affairs by the provisional government," and the American flag was hoisted with some ceremony over the government building. In a despatch dated February 11, Secretary Foster disavowed this proceeding so far as it might be construed as "setting the authority and power of the United States above that of the government of the Hawaiian Islands, in the capacity of protector, or to impair in any way the independent sovereignty of the Hawaiian government by substituting the flag and power of the United States as the symbol and manifestation of paramount authority." A treaty of annexation, negotiated by

Secretary Foster and the provisional government's commission transmitted to the Senate February 15, with a message from Harrison recommending its ratification. The treaty provided Hawaiian Islands become an integral part of the United States; a United States commissioner be appointed, with veto power over the existing provisional government, which, subject to this, shall continue until Congress otherwise provide; that the immigrant Chinese laborers to Hawaii be prohibited while the exclusion laws of the United States shall continue in force as against Chinese in Hawaii; that the United States pay to Queen Liliuokalani \$20,000 annually and to the heir to the throne, Princess Kaiaulani, a gross sum of \$100,000. The friends of annexation in the Senate were not strong enough to carry the treaty before March 4. On March 9, President Cleveland withdrew the treaty from the Senate, and on the 15th day appointed a commissioner, Mr. Blount, of Georgia, to Honolulu, to investigate the situation. The commissioner reached his destination two weeks later. On April 1, he declared the protectorate established by Minister Stevens ended, and ordered the removal of the United States flag from the government building, assuring the provisional government, however, that interference by any other foreign power would be tolerated. Pending the commissioner Blount's report, the *status quo* has been maintained without change of order. — The court of arbitration on the Behring Sea seal question began its formal sessions at Paris, March 23. The members of the court were as follows: For the United States, Justice John Marshall Harlan and Senator John T. Morgan; for Great Britain, Lord Hannon and John S. D. Thompson; for Sweden and Norway, Gregers W. V. V. for Italy, Marquis Emilio Visconti Venosta; and for France, M. Courcelles. The last named was chosen president of the court. Mr. Foster, who resigned his office of Secretary of State at the end of February appeared as agent of the United States, and Mr. C. H. B. Canadian Minister of Marine, as agent for Great Britain. The cases included Messrs. Phelps, Carter, Coudert and Blodgett, for the United States, and Sir Charles Russell and Sir Richard Webster, for Great Britain. The printed cases and counter-cases of the parties were presented to the court, and after a sharply contested controversy over the propriety of admitting a supplementary report on the fisheries, submitted at the last moment by Great Britain — the court deciding against its admission. — Mr. Carter began on April 12 the oral argument for the United States in an address that was not completed at the close of this RECONSTRUCTION. The preparation of the case for the United States for presentation to the court was much embarrassed by the discovery in November that an eminent lawyer, whom important duties had been assigned in preparing evidence, had committed deliberate interpolation and mistranslation rendered his work worthless, and so made necessary an entire recasting of the case which had been based upon it. — Our commercial relations with



have been under discussion in respect to a number of different points. The friction over canal tolls was removed by a Dominion order in council of February 13, fixing the tolls for 1893 in such a way as to terminate the discrimination against citizens of the United States. In recognition of this, President Harrison, by proclamation of February 21, suspended until further notice the retaliatory tolls imposed last August (*cf.* last RECORD, p. 763). The operation of the laws and Treasury regulations in reference to the admission to the United States of goods landed at Canadian ports and brought under bond to this country, or carried from one part of the United States to another through Canada under consular seal, was made a subject of complaint to Congress by Mr. Harrison. He held that these laws had become detrimental to the United States through the advantages they gave to Canada's growing railway system, which, while competing with the United States roads, was not, like them, subject to the restrictions of the Interstate Commerce Act. On the shore-fisheries question some progress has been made by a definite agreement for a joint commission of two experts to study and report upon the prevention of destructive methods in taking fish and shellfish, the prevention of pollution to the fisheries, the expediency of close seasons, and other such questions. — **The extradition treaty with Russia**, which was ratified by the Senate February 7, and of which the exchange of ratifications was announced in St. Petersburg April 21, has called forth vigorous protests from liberal Russians in this country and their sympathizers. The terms of the treaty have not yet been officially published, but it is understood that under its provisions the murder of the Czar is declared not to be a political offense, and hence to be extraditable. The protests are based on the assertions that the Russian law treats as the "accomplished crime" acts such as joining societies for political agitation, expressing opinions favorable to assassination, *etc.*, and that the secrecy of procedure in political trials will render it impossible for the United States government to insure that a man extradited on a clearly criminal charge shall not be punished for a purely political offense. It is alleged, moreover, that under the treaty the forgery of passports would be extraditable, and thus the only means by which political agitators can escape would be rendered useless.

**THE HARRISON ADMINISTRATION.** — The annual report of the **Secretary of the Treasury** in December showed for the year ending June 30, 1892, revenues of \$425,868,260.22, giving a surplus of \$9,914,453.66. This, added to other resources, was employed in reducing the public debt by \$40,570,467.98. As compared with the preceding year there was a decrease of thirty-two millions in revenue and ten millions in ordinary expenditure. For the year ending with June, 1893, the secretary estimated a surplus of two millions, and for the following year a little more, exclusive, however, of the requirements of the sinking fund. In view of the probable falling off of revenue under the coming tariff policy, and of the need of a larger gold reserve, the secretary considered the margin uncomfortably

small, and hinted at the advisability of an increase in the wh Commercial statistics were presented by the report to show that procuity arrangements of the administration had resulted in a increase of trade with the various countries as to both imports and On the question of the treasury's condition the majority of the Ho mittee on Ways and Means, after an examination of the subject just after the close of Congress that there was probability of a between thirty and forty millions by the end of the fiscal year 18 view was scouted by the Republican minority of the committee. — **of gold from the treasury** has continued to excite attention, and less anxiety in financial circles. At the end of January the amount was only about 108 millions, and shipments to Europe were act spite aid given by the banks to the treasury, the stock had decreas millions by March 4. Much discussion arose as to the duty and po Secretary of the Treasury to issue bonds to prevent the reserve f falling below a hundred millions. The legal power to take such a generally recognized, but a proposition by Senator Sherman explicit authority to issue a shorter-term and lower-rate bond, whi by the Senate February 18, failed to pass the House, partly be incoming secretary, Mr. Carlisle, manifested some confidence that of bonds could be avoided. — The provision for the registration o laborers, under the act of May 5, 1892, has been practically nullifi concerted refusal of the Chinese, under advice of the more infli their numbers, to apply for certificates. Preparations have been contest the constitutionality of the law if any attempt is made unregistered Chinamen at the expiration of the year which wa for obtaining certificates. — **The report of the Secretary of t** explained in detail the progress made in the creation of the m Altogether forty-two vessels have been built or authorized, of w teen were put in commission during Mr. Harrison's administra eighteen more will probably be completed by the end of 18 secretary reported also great improvements in the production of an and smokeless powder. — Early in January President Harrison **extension of the classified service**, so as to bring under the Civ Commission all free-delivery post-offices, 601 in number, instead of 53 which have fifty or more employees apiece, and also all employ Weather Bureau elsewhere than in Washington. The change af 7000 offices in all. — The following **appointments to office** were Mr. Harrison : — Ministers : To Italy, William Potter, of Penn November 15 ; to Turkey, David P. Thompson, of Oregon, Nov to Bolivia, Frederick J. Grant, of Washington, December 22 ; to Gilbert A. Pierce, of Minnesota, January 4 ; to Venezuela, Partridge, of Vermont, January 25. Department positions : Secretaries of the Treasury, John H. Gear, of Iowa, November G. M. Lamberton, of Nebraska, December 10 ; Commission

General Land Office, William M. Stone, of Iowa, November 19; First Assistant Postmaster-General, H. C. Evans, of Tennessee, January 7. To fill the vacancy in the Supreme Court of the United States, caused by the death of Justice Lamar, the president created some surprise by nominating, February 2, a Southern Democrat, Judge Howell E. Jackson, of the federal circuit court. His nomination was confirmed, but that of Mr. Benton Hanchett, of Michigan, a Republican, to fill the vacancy thus made on the circuit bench, failed to secure action by the Senate.

**CONGRESS.**—The second session of the fifty-second Congress lasted from December 5 to March 4. **President Harrison's message** opened and closed with a justification of the tariff policy pursued during his administration. He presented statistics at length to sustain the thesis that "so high a degree of prosperity and so general a diffusion of the comforts of life were never before enjoyed by our people," and declared his belief that the protective system had been a mighty instrument in producing this result. Nor could he believe it "a perversion of the constitution to so legislate as to preserve in [our workingmen's] homes the comfort, independence, loyalty and sense of interest in the government which are essential to good citizenship." Yet he accepted the result of the recent election as necessitating a new policy, namely, a tariff "constructed solely with reference to revenue. The contention has not been between schedules, but between principles, and it would be offensive to suggest that the prevailing party will not carry into legislation . . . the pledges given to the people." Under the circumstances he recommended that the whole subject of tariff revision be left to the incoming Congress. The success of the reciprocity agreements of his administration he demonstrated by statistics of exports, and by reference to "the alarmed attention of our European competitors for the South American market." As to foreign relations, the only friction referred to was that—not serious, however—connected with a tendency in Turkey to curtail the tolerance hitherto characterizing the treatment of religious and educational establishments of American citizens. Mr. Harrison renewed his advocacy of the postal subsidy policy already adopted, and of its extension. The administration of the Pension Bureau was commended, and the general policy of the pension system eulogized. In connection with a demand for an exclusively national quarantine system, the president recommended still further limitations on immigration, and he called again for some action by Congress looking to restraints upon gerrymandering and to more extensive control over federal elections.—The **legislation completed** at this session included few measures of great importance outside of the regular appropriations. These latter, which only passed in the last week of the session, amounted to over five hundred millions, making the total for the fifty-second Congress about equal to the billion which had been made a reproach against the fifty-first Congress. The deficiency appropriations amounted to about twenty-one millions, of which fourteen millions were for pensions. Among the bills which became law,



and which are not mentioned elsewhere in this RECORD, were the That repealing a clause of the McKinley tariff, by which a heavy (15 per cent) of duty on fine linen was to go into effect January 1, 1900; the Immigration Bill, requiring steamship companies to prepare a list of departure, and to present at the port of entry, full information of each of their immigrant passengers, and increasing by 50 per cent the excluded classes of aliens, namely, (1) those over sixteen years of age who are illiterate, (2) cripples, blind persons, or others physically imperfect, unless they can show satisfactorily that they will not become a public charge, and (3) persons belonging to societies which favor or justify the destruction of property or life; the Automatic Car-Coupler Bill, requiring interstate railways to adopt for freight cars some form of safety-coupler to be settled upon later; and a bill supplementing the Interstate Commerce Act by making it a penal offense to refuse to testify or produce papers under the subpoena of the commission, but exempting witnesses from prosecution or punishment for transactions concerning which they refuse to testify. — Of the **measures that failed** to pass, excepting the Senate Bill elsewhere referred to, most attention was attracted by the Anti-Trust Bill. The bill passed by the House of Representatives at the previous session (see last RECORD) was finally adopted by the Senate, after long discussion and some amendment, January 31, by a vote of 40 to 29. A large majority of the House of Representatives was ready to approve the bill without amendments, the sharp parliamentary tactics of the adversarial manager measure forced its manager to attempt its passage, March 1, under a suspension of the rules, which required a two-thirds majority. The vote was 172 for and 123 against suspension, and the attempt according to the rules failed. A bill repealing the clause of the McKinley tariff by which a duty of 10 per cent was to be imposed on bar, block and pig tin after July 1, 1893, was passed by the House, but failed in the Senate. — Pursuant to a call of the President, Harrison, an **extra session of the Senate** began March 6. A reorganization of the committees was immediately effected, to correspond to the changed political complexion of the majority. The chairmen of the important committees were elected as follows: Appropriations, Charles McNary of Missouri; Commerce, Ransom of North Carolina; Finance, Charles McNary of Indiana; Foreign Relations, Morgan of Alabama; Indian Affairs, Charles McNary of Arkansas; Interstate Commerce, Butler of South Carolina; Pugh of Alabama; Pensions, Palmer of Illinois; Privileges and Immunities, Vance of North Carolina. Beyond confirming the nominations made by the president, no business of importance was transacted, and the session adjourned April 16.

**THE ELECTIONS.** — The voting on November 8 resulted in a victory for the Democratic Party, which gained control of the Presidency and of both houses of Congress. As formally declared by Congress on February 8, the electoral **vote for president and vice-president** was as follows: Cleveland and Stevenson, 277; Harrison and Reid, 145; W.

Field, 22. The most striking feature of the elections was the great losses of the Republicans in the West. Illinois and Wisconsin went Democratic by large majorities, California and Ohio were very close, and Colorado, Idaho, Kansas and Nevada chose Populist electors. The Democrats carried all the Northern states generally regarded as doubtful, *vis.*, Connecticut, New York and Indiana, but they nearly lost Delaware. An unusual incident of the result was the division of the electoral vote in several states, owing to the closeness of the popular vote. Thus in Ohio one Cleveland elector and in Oregon one Weaver elector was chosen, the others being Republican; and in California and North Dakota Mr. Harrison secured single votes in the same way. From the conditions of fusion between the Democrats and Populists in the last-named state, it resulted that one of her three electoral votes was given to each of the three candidates. In Michigan, under the district method of choosing electors recently established, Harrison got nine votes and Cleveland five. The popular vote of the whole country was as follows: Cleveland, 5,554,685; Harrison, 5,172,343; Weaver, 1,040,600; Bidwell, 273,314. These figures give to Weaver the total fusion vote of the five states in which the Democrats coalesced with the Populists. — The voting for representatives in Congress resulted in the return of a clear Democratic majority of about 70. The political complexion of the Senate was long in doubt, owing to the confused situation in many of the Western legislatures, where the Populists were an influential third party. As settled in March, after the adjournment of the doubtful legislatures, the roll showed 45 Democrats, 39 Republicans and 4 Populists, thus assuring to the Democrats the organization of the house. Some doubt exists, however, as to the validity of the election by which a Democrat was chosen in Kansas, and as to the regularity of appointments by the governors in three states where the legislatures failed to elect. This latter question involves two Republicans and one Democrat.

**THE CLEVELAND ADMINISTRATION.** — The inauguration of the new president took place with the usual ceremonies Saturday, March 4. Mr. Cleveland's *inaugural address* took as its general theme the perils of over-confidence in our institutions and the necessity of watching constantly "for every symptom of insidious infirmity that threatens our national vigor." Among the dangers that were now threatening he referred especially to the exposure of the currency to degradation, and to the popular disposition "to expect from the operation of the government especial and direct individual advantages," — a disposition from which spring the "evils which are the unwholesome progeny of paternalism," such as protection for protection's sake, bounties and subsidies, which burden part of the people "to aid ill-advised or languishing enterprises," and "reckless pension expenditure, which overleaps the bounds of grateful recognition of patriotic service, and prostitutes to vicious uses the people's prompt and generous impulse to aid those disabled in their country's defense." He deprecated "the contempt of our people for frugality and economy in their personal affairs," as deplor-

ably sapping the strength of our national character, and as dis- strict economy in public expenditures. Civil service reform, rest combinations in trade which limit production and fix prices, and before the law without reference to race or color were set forth a to the American ideal. As to tariff reform, Mr. Cleveland reco people's positive mandate that it be accomplished, but held tha must be undertaken wisely and without vindictiveness. Our mis punishment, but the rectification of wrongs." He admitted tha was a difficult one, but called upon those who were to coöperate for sincere, disinterested and harmonious effort; since failure w swift and exact accountability to the people. — **The new ca** completed February 22, Mr. Cleveland having disregarded form by announcing the members as soon as their acceptance was given. The list was as follows: Secretary of State, Walter Q. of Indiana; Secretary of the Treasury, John G. Carlisle, of Secretary of War, Daniel S. Lamont, of New York; Secretary of Hilary A. Herbert, of Alabama; Secretary of the Interior, Hoke Georgia; Secretary of Agriculture, J. Sterling Morton, of Nebras master General, Wilson S. Bissell, of New York; Attorney Genera Olney, of Massachusetts. Most comment was occasioned by th ment of Judge Gresham to the State Department, the judge hav the last campaign been a Republican. — The attention of the nev tration up to the close of this RECORD has been occupied ch **appointments to office.** By a clause of the Diplomatic App Act, passed February 27, the president was authorized to raise to the rank of ambassador whenever the government to whic accredited gave that rank to its representative at Washington Britain and France accordingly promoted their ministers at Was be ambassadors, and Mr. Cleveland in return nominated ex-Secr ard, of Delaware, and ex-Senator Eustis, of Louisiana, as amba those two governments respectively. Mr. Eustis was nominate only minister, but after the official notice, March 25, that France moted her minister, the president sent in his name again for the hi The other principal diplomatic representatives appointed were as f Envoys Extraordinary and Ministers Plenipotentiary: To Germa dore Runyon, of New Jersey; to Denmark, John E. Risley, of N to Mexico, Isaac P. Gray, of Indiana; to Chile, James D. Tennessee; to Peru, James A. McKenzie, of Kentucky; to M Costa Rica and San Salvador, Lewis Baker, of Minnesota; to C and Honduras, P. N. B. Young, of Georgia; to Japan, Edwin Ohio; to Switzerland, James O. Broadhead, of Missouri; to Hungary, Bartlett Tripp, of South Dakota; to Greece, Roun Servia, Eben Alexander, of North Carolina; to Spain, Hannis Alabama; to Turkey, Alex. W. Terrell, of Texas; to Colombi F. McKinney, of New Hampshire; to Brazil, Thomas L. Tho



California. Minister-Resident to Portugal, G. W. Caruth, of Arkansas. Important posts in the executive departments at Washington were filled as follows :—State Department : First Assistant Secretary, Josiah Quincy, of Massachusetts ; Third Assistant Secretary, Edward H. Strobel, of New York ; Solicitor, Walter D. Dabney, of Virginia. The Treasury : Assistant Secretaries, William E. Curtis, of New York, and Charles S. Hamlin, of Massachusetts ; Treasurer, Daniel N. Morgan, of Connecticut ; Controller of the Currency, James H. Eckels, of Illinois ; Commissioner of Internal Revenue, J. B. Miller, of West Virginia. Department of the Interior : Assistant Secretary, John M. Reynolds, of Pennsylvania ; Commissioner of Pensions, William Lochren, of Minnesota ; Commissioner of Indian Affairs, Daniel M. Browning, of Illinois ; Commissioner of Railroads, Wade Hampton, of South Carolina ; Commissioner of Patents, — Seymour, of Connecticut. Navy Department : Assistant Secretary, William McAdoo, of New Jersey. Department of Justice : Assistant Attorneys General, John I. Hall, of Georgia, and Edward B. Whitney, of New York ; Solicitor General, Lawrence Maxwell, jr., of Ohio. Post Office Department : Fourth Assistant Postmaster General, Robert A. Maxwell, of New York. The vacant seat on the circuit bench was filled by James G. Jenkins, of Wisconsin. In dealing with applications for office, Mr. Cleveland laid down the rule within a week after his inauguration that the fact of having held an office during his previous term would not be a conclusive recommendation for a reappointment of the applicant. The rule was not held, however, to operate against an applicant for an office different from that previously held. As to postmasters, two important principles were announced by the department ; first that no postmasters whose salaries depend on the sale of stamps shall be engaged in any other business than that of postmaster ; and second, no application for a postmastership would be considered unless accompanied by a paper showing that the applicant was endorsed by a fair proportion of the people who used the office. The new Treasury Department regulations required a pass, not competitive, examination for the position of chief of division. — A renewal of heavy gold exportation in the middle of April brought prominently before the public **the administration's policy as to gold**. On the 16th Secretary Carlisle suspended the issue of gold certificates, as is by law required when the greenback-redemption fund falls below \$100,000,000. Disquieting rumors as to the course to be pursued by the Treasury, in view of the admitted fact that the reserve had been invaded, led to a statement by Mr. Carlisle, April 20, declaring that the government proposed to maintain the parity of gold and silver by all lawful means, but omitting to state the means that would be employed. This omission gave rise to reports that the coin certificates under the Sherman Act of 1890 were to be deemed in silver. On the 23d, President Cleveland issued a statement denying emphatically that such a course had been contemplated, and declaring that the cabinet was entirely harmonious in the purpose to main-

tain the public credit. Secretary Carlisle received aid from the and Western banks in contributions of gold in exchange for notes. The negotiations with the New York banks were not successful. At the close of the RECORD the reserve was several millions below the hundred million dollar mark.

**THE SILVER QUESTION.**—The International Monetary Conference called by the United States to deal with this subject sat at Washington from November 22 to December 17. The main features of the proceedings (for more detail see *ante*, pp. 197 *et seq.*) were as follows: First, the Government of the United States submitted a resolution affirming the desirability of increasing the use of silver as currency, and suggested two different plans by which this end might be attained, without full general bimetallicity. On November 28 Mr. de Rothschild, a delegate for Great Britain, submitted a plan providing that the United States should continue its present policy of free coinage of silver, while the European powers should aid in keeping up the value of silver by the annual purchase for five years of twenty-five million dollars. All these plans were referred to a committee of fourteen, which reported on December 2, and modified the plans, and then reported them back to the conference on December 2, but without recommendation of any one. The conference then, after some little discussion of the Rothschild plan, which resulted in its withdrawal, then devoted itself to a general discussion of bimetallicity, but without any definite results. On December 17 it was resolved that the conference be suspended, to be resumed, if the various governments approve, on the 30th of May, 1893.—In Congress attention was centered on the possibility of securing the repeal of the silver-purchase law known as the Sherman Act. Several bills for attaining this end were introduced, by both friends and foes of the free coinage of silver. The friends of free coinage desired repeal in order to get rid of only the purchase of silver of low quality in the silver purchased; their opponents wanted repeal of the purchase altogether. A motion of Senator Hill, of New York, to take up his bill for repeal was defeated in the Senate, February 2, by a vote of 42 to 23. A similar motion in the House three days later met a like fate, and hence no result was reached.

**THE FEDERAL JUDICIARY.**—On April 3 the supreme court decided, in the case of *Lascelles*, that when a fugitive from justice has been surrendered by one state of the Union to another, upon being charged with a specific crime, is tried in the state to which he has been turned for another offense than that charged in the requisition, there is no violation of any right, privilege or immunity secured to the fugitive by the constitution and laws of the United States. On April 16, the court held that a discrimination in the Texas law against liquor in respect to the manner of collecting taxes was not a violation of the fourteenth amendment.—In South Carolina and Missouri the state courts have been obliged to assert their authority against federal officers. Sheriffs in four counties of the former state, under spec-



of the governor, seized for non-payment of taxes property of several railroads which were in the hands of receivers appointed by the federal courts. The circuit court at Charleston thereupon, February 16, arrested and fined the sheriffs for contempt, and the governor proceeded to bring the matter to the supreme court at Washington by *habeas corpus*. On April 24, the supreme court denied the writ in an opinion sustaining the lower court in every particular. In Missouri the federal district court declined, March 3, to release from imprisonment for contempt the St. Clair County judges who refused to levy a special tax ordered by the court to pay certain railway bonds—the refusal being based on a clause of the state constitution explicitly prohibiting special levies in such cases.—The difficulties in the way of enforcing the provision of the Interstate Commerce Act forbidding discrimination in rates were illustrated anew in the district court at Chicago by the failure in November of an attempt to prosecute prominent business men and railway officers for violating the law. The district attorney admitted that, under the ruling that the defendants need not answer questions tending to criminate themselves, he had no sufficient evidence. On December 7, Judge Gresham, of the circuit court at Chicago, rendered a decision even more demoralizing to the purpose of the law than the decision on the short-haul clause in October (see last RECORD, p. 767). Application having been made to the court for an order compelling the production of books and the answering of questions deemed necessary to certain investigations by the Interstate Commerce Commission, Judge Gresham decided that “so much of section 12 [of the act] as authorizes or requires the courts to use their powers in aid of inquiries before the Interstate Commerce Commission is unconstitutional and void.”

**THE CHOLERA AND QUARANTINE.**—The operation of the Treasury circular of September 1, requiring twenty days' quarantine for every vessel carrying immigrants, acquired new force by a ruling of the acting-secretary, November 3, in which “immigrants” was construed to mean “persons who are not naturalized citizens, who arrive in this country for the purpose of establishing permanent residence, . . . without reference to what part of the vessel said passengers have occupied during the voyage.” A tendency to limit “immigrants” to “steerage passengers” was thus checked, and the availability of health regulations for the restriction of immigration in general was emphasized.—In view of the continued manifestations of cholera in Europe, a more satisfactory system of dealing with it on this side was regarded as necessary. Exclusively national quarantine service was thought by many to be desirable, but when measures looking to this end were brought forward in Congress, state interests and the fear of centralization proved very influential. The bill that became law in February requires first, for every vessel entering the United States from a foreign port, a sanitary certificate from a consul or medical officer of the United States at the port of departure. The Secretary of the Treasury is then authorized to make rules and regulations to prevent the introduction of

contagious diseases into the country, which rules are to be enforced by state and municipal boards of health, but with the "coöperation of the national marine-hospital service. Where "sufficient quarantine has been made by state or local authorities," infected vessels are to be quarantined under such authorities; but where no such provision has been made, the national officials are to deal with the matter at the discretion of the president. Finally, when the president is satisfied that the interest of the country demands it, he is authorized "to prohibit, in whole or in part, the exportation of persons or property from such countries or places as he may designate and for such period of time as he may deem necessary." "rules and regulations" required by this law were promulgated by the Secretary of the Treasury March 3. They are especially applicable to the inspection and disinfection at the foreign port.

## II. AFFAIRS IN THE STATES.

**THE ELECTIONS.**—The voting for state officers in November 1892, in general the same Republican losses that were revealed on national canvass. In Massachusetts, which gave Harrison a large majority, the election of the Democratic governor, Russell, was generally regarded as due to the popularity of the Democratic party. In the West the Populist influence was chiefly responsible for some differences between state and national results. Thus Wyoming, giving its electoral vote to Harrison, chose a Democratic governor. Idaho, whose presidential vote went to Weaver, elected a Republican governor. A number of legislatures were very evenly divided. In Wyoming and Kansas resort to the courts was necessary to determine which party should be in control. The Republicans carried the day in both states and the Democrats in Wyoming. **The dispute in Kansas** was particularly serious and for some time threatened bloodshed. Here the Populists by fusion had practically absorbed the Democratic party, carrying the electoral and state tickets, and secured a substantial majority in both the house and senate. In the lower house of the legislature the formal return showed a clear Republican majority, and an appeal to the courts by the Democrats failed to shake the legality of this situation. At the meeting of the legislature in January, however, the Populists persisted in organizing the lower house by the votes of contestants for seats which the state board had given to the Republicans. This proceeding was sustained by the Republicans, who set up an organization of their own, each claiming to be the legal house, contended during the session for the possession of the legislative hall amid great confusion. The Populist governor and senate recognized the Populist house, and the latter long avoided any act by which the controversy could be brought before the courts. On February 25, however, a case which decided the status of the Republican organization was decided by the supreme court, which sustained the legality of that house. Two days later

members resolved to submit to the court's opinion and to join with the Republican body. The municipal elections in April showed general Republican victories, which were attributed to an unusually active participation of the women, who enjoy the right of voting in local affairs. — The Rhode Island elections in April resulted in a small Democratic plurality, throwing the election of governor into the legislature. In Michigan the Republicans carried their state officers, April 3, by about the same majorities as their electors in November. — **Constitutional amendments** were voted on in a number of states. New York rejected three, providing respectively for the settlement of disputed elections by the courts, an increase in the number of supreme court judges, and the sale of salt springs by the legislature. In Massachusetts one was ratified, abolishing the property qualification for the office of governor. In California a proposed amendment extending the limit of legislative sessions from sixty to one hundred days was defeated, and one fixing a limit to the amount of debt to be incurred by municipal corporations was carried. Popular votes were taken in this state to elicit opinion on the desirability of electing United States senators by direct vote of the people, and of an educational qualification for voters. Each question was decided in the affirmative by great majorities. Colorado ratified two amendments, authorizing municipalities to levy special assessments for public improvements and repealing the limitation on the state tax levy. Illinois rejected a proposition to permit two constitutional amendments to be submitted to popular vote at the same time. Minnesota ratified an amendment prohibiting special legislation. Rhode Island rejected a proposal to make elections biennial instead of annual.

**VARIOUS LEGISLATION.** — The general triumph of the People's Party in **Kansas** aroused much interest in the laws and administration which should come from this fact. Governor Lewelling's inaugural address was conceived in terms like those of the party platform and the "demands" of the Farmers' Alliances. The conflict over the control of the house (see above) and the constitutional limit on the duration of the session prevented the completion of the radical railway legislation that was expected. Among the laws actually passed were an Australian Ballot and a Corrupt Practices Act; a Valued-Policy Act for insurance companies, and a bill forbidding contracts payable in gold. — In **Idaho** the competition of the parties for votes resulted in the passage of a law granting the suffrage to the Mormons, hitherto disfranchised. — The law in Michigan providing for the choice of presidential electors by districts was repealed early in February. — The current of judicial opinion against **gerrymandering** has been swollen by a decision of the Indiana supreme court, December 17, declaring unconstitutional the apportionment acts of 1891, 1885 and 1879, and by a decision of the New York court of appeals, April 11, nullifying a grossly unequal apportionment of Kings County into Assembly districts. — The court of appeals in **Maryland** declared unconstitutional, March 15, an act under

which the municipal authorities of the village of Hyattsville had operation a system of assessment involving the principles of the tax on land. It was held that under the state constitution the legislature had no power to impose the whole burden of taxation on a single property.

**LABOR INTERESTS.**—**The Homestead strike**, which caused serious trouble last summer, was continued in force, but with waning vigor till November 20, when it was formally declared off by the workmen's association. No convictions were secured in the trials of the leading strikers for murder in connection with the attack on the Pinkerton water tower in July, but one of the strikers was convicted of participation in a seditious plot to murder non-union men by putting poison in their food.—**Recent judicial decisions on boycotting** in various localities have thrown an important light on the legal questions involved. Circuit Judge Taft at New Orleans, March 25, in dealing with a case arising out of a general labor strike in that city in November, held that the term "combination" in the Anti-Trust Act in reference to combinations in restraint of interstate and foreign commerce applied as well to laborers as to capitalists; that a combination among laborers to allow no work to be done in the city of New Orleans from state to state, and to and from foreign countries, in order to meet the demands of employees in certain kinds of business were complied with within the prohibition of the statute; but that the mere refusal to work by a combination among many laborers not to work, with no attempt at intimidation and violence to prevent others from working, would not violate the statute. At Toledo, Ohio, April 3, Judge Ricks, of the Sixth States district court, having previously issued an injunction restraining the Lake Shore Railroad from refusing to take freight from or to the Akron and Cleveland road, whose engineers were on strike, fined for contempt of court an engineer of the former line who, while making a run, refused to take a freight car from the latter. Several engineers who gave up their positions to handle the boycotted freight were also charged with contempt, but were acquitted on the ground that in giving up their positions before the court they turned their engines to the train for the run, they were within their rights. Judge Taft, of the circuit court, at the same place and on the same day issued an order restraining Chief Arthur, of the Brotherhood of Locomotive Engineers, from putting in force a rule of that association forbidding its members to boycott freight and cars from or to any road on which a labor brotherhood strike existed. The basis of these decisions was (1) the provisions of the Interstate Commerce Act requiring common carriers to afford equal and equal facilities for interchange of traffic between their respective lines; (2) the principle that the employees of a company constitute part of the company so far as the requirements of the act are concerned; and as to the case of Chief Arthur, that the order to boycott, being an injunction, was in violation of the law, is subject to control by the courts. THE

question has been carried up to the United States supreme court. At Macon, Georgia, April 8, Judge Speer, of the United States circuit court, granted a petition of the Brotherhood of Locomotive Engineers that the receiver of a road in the court's control should contract with the organization in reference to terms for the services of its members. The judge pointed out to the petitioners, however, that the rule of their organization obliging members to boycott the cars of a road where a strike was in force, was a direct violation of both the Anti-Trust and the Interstate Commerce acts, and he required a formal pledge to recognize this fact as a condition of granting their petition.—The annual convention of the Knights of Labor was held at St. Louis, November 15. A membership of 260,000 was reported, and a good balance in the treasury. Mr. Powderly was reelected General Master Workman. The Federation of Labor held its annual session at Philadelphia, beginning December 12. Here, too, a growing membership and satisfactory finances were reported, and the former president, Mr. Gompers, was reelected. In both assemblies much denunciation was directed at the use of the militia against strikers and at the failure to stop foreign immigration, and in each the hopelessness of reconciling the differences between the two was admitted.

**THE FARMERS' ALLIANCE.**—The annual convention of this organization was held at Memphis, November 15–19. The proceedings were characterized throughout by much bitterness between the faction favoring and that opposing political activity in the order. The former had its strength among the members from the Northwest; the latter among those from the South. In the election of president, H. L. Loucks, the candidate of the former element, was successful. The failure of the Southern members to leave the Democrats and vote for Weaver in the last election was a source of great dissatisfaction to the Western members. As against the action of the latter on various matters, the Southern delegates entered a formal protest, concluding with an expression of fear that they would sooner or later be forced to withdraw their respective state Alliances from the general organization. The members of the executive committee of the People's Party were in Memphis during the convention and were very active in influencing the assaults on the Southern delegates.

**NECROLOGY.**—January 11, General B. F. Butler; January 15, Gen. Rufus Ingalls, formerly quartermaster-general of the army; January 17, ex-President Rutherford B. Hayes; January 23, Supreme Court Justice Lucius Q. C. Lamar; January 27, ex-Secretary of State James G. Blaine.

## II. FOREIGN NATIONS.

**INTERNATIONAL RELATIONS.**—Striking incidents under this head have been entirely lacking during the period under review. Some new phases of the commercial adjustment in Europe have appeared. A tariff



war has arisen between France and Switzerland, caused by the Chamber's rejection, December 24, of the convention negotiated last summer. France has concluded a treaty with Canada, which lacks ratification. Spain's negotiations with Germany, France's with Portugal, have not been concluded, but an agreement with Portugal was reached March 23 which is so liberal in its terms as to amount practically to a commercial union for the peninsula. Negotiations between Germany and Russia seem not to have resulted on a satisfactory basis for agreement. — In the field of **royal sociability** the cordial visit of the Russian heir-apparent to Berlin, for the wedding of Princess Margaret, in January, was construed as evidence of a policy leaning on the part of the Czar, designed to inform the French that the Franco-Russian scandal was not approved in St. Petersburg. The silver wedding of King Humbert was the occasion of a visit of the Emperor William to Rome, March 20. On the 23d the emperor made a state call at the Vatican and a private conference of fifty-eight minutes with Pope Leo. The emperor discussed questions as to the Austrian emperor's policy on the occasion of Humbert's celebration was solved by the designation of the Duke of Rénier to represent Francis Joseph, with instructions not to call on the emperor. The clerical press and the Irredentists were equally offended by this action. — The Russian government found occasion in the proposed amendment of the Bulgarian constitution to send forth in March one of its circular notes to the powers, protesting against the proceeding as an instance of the tyranny with which the government was afflicting the people of the principality. On the occasion of Prince Ferdinand's wedding in April, the prince and Premier Stambouloff were received in Vienna, though not officially, and Stambouloff, in public speech, assumed a tone of very bold defiance as against Russia. — In reference to the Pamirs, Russia has declined to enter into a triangular negotiation with China and Great Britain, but has consented to treat with each separately. The officers connected with last summer's expedition to the Pamirs received especial honors from the government for their conduct in the matter.

**GREAT BRITAIN AND IRELAND.** — Judicial decisions under the Corrupt Practices Act resulted in the unseating of members of Parliament chosen in four districts at the last elections. Two Conservatives in English constituencies were thrown out for having paid money to electors and "treating," and two anti-Parnellite Irish members, one of whom, Michael Davitt, were disqualified on account of the active employment by the Catholic clergy of spiritual influence in the election. — **Parliament** did not convene till January 31. The Queen announced a slight increase of British troops in Egypt, but no modification of policy, and a decrease of agrarian crime in Ireland by the revocation of the coercion proclamations. The measures for consideration, besides the Irish Government Bill, included

number of projects for internal reform in England and Wales on lines satisfactory to the more radical elements of the party. The debate on the Address was terminated February 11, and on the 13th the **Home Rule Bill** was introduced by Mr. Gladstone, in a speech of two hours and a quarter. Leading features of the measure were as follows: A bicameral legislature for Ireland, with powers limited first by a list of subjects regarded as imperial in their nature, and second, by a kind of bill of rights, securing to individuals religious freedom, due process of law in deprivation of life, liberty or property, *etc.*; the two chambers to be elective, the first, by voters having a twenty-pound qualification as owners or occupiers, the second, by voters qualified under the existing Parliamentary franchise. An executive, consisting of (1) a lord-lieutenant appointed by the queen for six years, subject to removal, and (2) a cabinet on whose advice, subject to the overruling of her Majesty, the lord-lieutenant shall approve or veto the bills passed by the legislature. An independent judiciary, with appeal to the British privy council; before the latter, as a supreme court, either the lord-lieutenant or a secretary of state may bring for speedy determination the question whether any act of the legislature is *ultra vires*. The Irish peers to sit in the House of Lords and eighty members for Ireland to sit in the House of Commons at Westminster, but without the right to vote on matters not directly affecting Ireland, each house to be the final interpreter for its own members of any question arising on this point. All taxation of Ireland, *save* customs, excises and postage, to be imposed by the Irish legislature, to which also is committed the collection of all *save* the customs, which are to go directly into the British exchequer and constitute Ireland's contribution to imperial expenditure. The Irish Constabulary to be gradually reduced and replaced by local police; and no legislation on the relations of landlord and tenant to be enacted by the Irish legislature for three years after the passing of this act. The chief points of attack on the bill by the Conservatives, outside the general issue, were the admitted difficulties of working Parliament with Irish representatives voting for some purposes and not for others, the alleged injustice of the financial adjustment, and the lack of protection for the interests of Ulster. The Parnellite faction assumed a critical but not seriously hostile attitude toward the bill. Both Irish factions claim that the financial clauses are unfair to Ireland. The second reading of the bill was moved by Mr. Gladstone April 6, and was carried April 21 by a vote of 347 to 304. — In the interval between the introduction and second reading of the government's chief measure, a number of **other bills** announced in the Queen's Speech were brought forward and advanced through the first stages. Among these were: A bill suspending the creation of new ecclesiastical interests in Wales, being the first step toward disestablishment in the principality; the Parish Councils Bill, transferring local government in rural districts in England and Wales from the vestries and guardians to councils, elected by secret ballot on the "one man one vote" principle; the

Direct Veto Bill, providing for local option on the question of perm liquor traffic ; an Employers' Liability Bill ; and a Registration Bill, to facilitate voting especially by the poorer classes. — Sir William Harcourt presented the budget for the coming year April 24. It announced a probable deficit of £1,574,000, which the government proposed to meet by an increase of the income tax a penny in the pound. — A Lancashire cotton workmen, which began in November and employed 125,000 hands, was only ended March 24. The cause of the strike was the proposed reduction of wages, and the result was a compromise by which half the proposed reduction was made, but in which a very elaborate system was arranged for the prevention of strikes in the future. — In Ireland the Evicted Tenants Commission (see last RECORD, p. 776) began its work November 8. At the first sitting the privilege of cross-examining witnesses was denied to counsel for Lord Clanricarde, whose estate was under investigation, and thereafter the landlords generally refused to attend for evidence. The report of the commission was presented in March and recommended that either the Land Commission or a special commission should be clothed with extensive authority to settle the existing difficulties, acting as arbitrators where conciliation was possible, and in other cases exercising discretionary power to locate the tenants on some land other than their old holdings. In December the government pardoned four Irish prisoners undergoing punishment for participation in an assault which resulted in the death of a police officer at Gweedore, some years ago. In January two of the Irish dynamiters were released from prison. An explosion of a dynamite bomb at Dublin Castle, by which a police detective was killed, occurred just after the first of these incidents, and was seized upon by the opposition as pointing the moral of a policy of leniency. — Belfast has been the center of a most tempestuous agitation since the introduction of the Home Rule Bill. Public meetings, petitions to government, processions, the churches and countless other methods of expressing hostility have been employed. Threats of civil war rather than submission have been common, and reports of military organization and drill among the Ulster men are well authenticated. In the last week of April, just after the meeting of Mr. Balfour and other opposition leaders to Belfast, rioting again broke out. Catholics began among the Orangemen in that city, but was checked by the police before great damage was done.

**THE BRITISH COLONIES.** — The expected reorganization of the Canadian ministry followed the resignation, November 25, of the Minister Abbott, on account of ill health. He was succeeded by Mr. S. D. Thompson, who retained all but two of the former ministers. The Dominion Parliament was in session from January 26 to April 1, one of the shortest sessions on record. Party contention centered chiefly about tariff policy, the Liberal opposition demanding reciprocity with the United States, and the government holding to tariff protection. Some slight reductions of duty were proposed.



finance minister's budget speech. Owing to some uncertainty as to the effect of the most-favored-nation clause on relations with the United States, the reciprocity treaty negotiated with France in March was not laid before Parliament for ratification. — Relations between **Newfoundland and Canada** have been put on a better footing through a conference between delegates of the two governments at Halifax in November. Tariff discriminations on both sides have been abandoned, Newfoundland's Bait Act has been suspended, and Canada has intimated a willingness to withdraw her opposition to a special commercial agreement of Newfoundland with the United States if she cannot herself soon reach an arrangement with the latter government. The conference will meet again in June. — In **Australia**, financial difficulties have absorbed most of the energies of the various governments. Business failures have been numerous and disastrous and the public revenues have fallen off greatly in most of the colonies of the continent. A policy of thorough retrenchment in expenditure and increase of taxation has been forced upon every government. A step forward in the matter of Australasian federation was taken in January through the adoption by the legislature of New South Wales of resolutions approving the main principles of the draft of a constitution made in 1891 (see RECORD for June, 1891, p. 394), recommending a second convention, to consider such amendments as should be suggested by the various governments, and declaring that the final adoption of a federal constitution ought to be by popular vote in each colony. — A **constitutional reform in India**, in accordance with a recent act of Parliament, was put in operation by the government during the spring. The legislative councils, both supreme and provincial, will hereafter include non-official members, practically elected (but subject to the approval of the various governors) by constituencies embracing the most progressive classes of natives. This scheme is a first step toward conciliating the great body of native opinion which is agitating for representative institutions.

**GERMANY.** — The central point in imperial politics all through the period under review has been the **Army Bill**. The Reichstag was opened November 22 with a speech from the emperor in which he laid especial stress upon the importance of the measure. On the following day the bill, having been adopted by the Bundesrath, was introduced in the lower house. Chancellor von Caprivi in his opening speech laid the main stress on the necessity of keeping up with the increasing numbers of the French and Russian forces. Public opinion had been from the outset generally hostile to the proposed law, and most of the various fractions in the legislature promptly declared themselves against it. The project, after its first reading, was in the middle of December referred to a committee of twenty-eight members, where it was vigorously discussed throughout the winter, the chancellor steadily refusing all demands for amendments made by the various parties as conditions of their support. The government had sought to conciliate favor to the increase of numbers by the provision reducing the

term of service from three to two years. The Freisinnige Party the latter and rejected the former clause; the Clericals took the same ground; the National Liberals proposed a compromise less increase than the bill demanded; while some of the Conservatives, which fraction alone Caprivi obtained important support, objected to any change in the term of service. On March 17 the committee, after a definite vote, resolved to report against the bill. Protracted negotiations by the government with the Clericals had not won them over until April, and a dissolution of the Reichstag was then generally expected. The difficulties of the government in reference to its principal measures closely connected with **other projects of legislation** which were under consideration during the session. A bill permitting a return of the army, for example, failed of passage; and this was regarded as a reflection on the attitude of the Clericals. The Conservatives, moreover, were not in following the government, on account of dissatisfaction with its commercial policy. Reports as to the progress of negotiations with regard to a commercial treaty stirred up great commotion among this class, besides attacks on the government in Parliament, a great gathering of agriculturists at Berlin in the middle of February was employed in agitation against the abandonment of the old protective principle in favor of bimetallism. Several strong agrarian organizations were formed, under the leadership of prominent Conservatives, with a view to opposing both the commercial and the monetary policy of the government. — Another movement that has had some influence in the connection between the government and the Conservatives is the resurgence of **anti-Semitism**. The central figure in this is one who some time since was convicted of libel upon the members of a firm of contractors, whom he charged with furnishing defective work to the government. While in prison awaiting trial he was unexpectedly released to the Reichstag in a district where anti-Semitic votes had been largely unknown. Having served out his sentence he was released immediately and resumed his agitation. In the Reichstag he made charges of corruption in the government in connection with various matters in which Jewish financiers were concerned, but failed to substantiate the accusations, and was denounced by every member of the house. In public meetings, however, he has continued to attract large crowds, especially from the lower classes. The influence of the movement he represents has been seen in several other elections, in which the anti-Semitic vote has been decisive. Though the Conservatives have renounced Ahlwardt, yet a serious anti-Semitic feeling is to be seen among their followers, and the possible effect of this in a general election is a subject of perplexity. — **In the Prussian Landtag**, which was held in session November 9, interest centered chiefly in a comprehensive bill of tax reform, with which was connected a reform in the laws relating to the land. The main purpose of the former project was to separate

munal from state taxation. To the local governments were assigned the land, building and occupation taxes, while the state retained for general purposes the income tax. In compensation for the hundred million marks thus turned over to the communes, a new graduated property tax was proposed for the central government, with exemption of all persons owning less than 6000 marks. The Electoral Reform Bill was designed to modify the conditions through which the wealthy classes secure a sure control of the House of Deputies in the Landtag. These projects were only carried in the lower house of the Landtag April 14, and their final form was the result of such concessions to the Conservatives as alienated from Finance Minister Miquel many of the National Liberals with whom he was formerly identified.

**FRANCE** — An epilogue to the Carmaux labor troubles which Premier Loubet seemed to have settled at the end of October, was seen on November 8 in the explosion of an infernal machine which had been placed in the Paris office of the Carmaux Mining Company. The machine was discovered and taken to a police station, where it exploded and killed five persons. The government immediately brought in, and after some difficulty passed, a bill increasing the stringency of the laws against incitement to violence through the press. — At the same time that this press bill was under discussion the beginning was made in the development of the **Panama Canal scandal**, which has since dominated entirely the political life of France. Early in November the government, as the result of a long investigation, directed the judicial prosecution of certain directors of the defunct Panama Canal Company, including Ferdinand de Lesseps and his son Charles, on the charge of fraudulent devices and swindling in obtaining the funds for their enterprise. The trials on this charge were held in January, and resulted in the conviction of the defendants and their sentence to fine and imprisonment. But in the meantime public interest had been concentrated almost entirely on another phase of the affair. On November 21 M. Delahaye, a "Revisionist" deputy, declared in the Chamber that a former minister, several senators and many deputies had been bribed in connection with the Lottery Bill through which in 1888 the last attempt had been made to set the company on its feet. An investigating committee was immediately appointed to examine these charges, with M. Brisson as president. Evidence soon appeared that seriously compromised many journalists and politicians. It was discovered that some \$20,000,000 had been paid out by the directors for "advertising" and other means of promoting their project, much of it through one Baron de Reinach, who died suddenly just after the government announced its intention to prosecute the directors. Reinach had been in financial relations with many politicians and from the stubs of his check book large sums were traced to public men. Stimulated by the frenzy of accusation that developed, especially among the "Revisionists" and Royalists, the committee labored with great effect through December and January, being aided by a frank confession by Charles de Lesseps on his trial, and at



the end of the latter month judicial prosecutions were instituted of bribery and corruption, against eleven persons, including a company, ex-ministers, deputies and senators. The trial of the March 8, brought further damaging disclosures in reference to politicians and their methods, but only three of the defendants were convicted. The general **political effect of the scandal** was to shake very seriously the hold of the dominant Republican faction on the government, and to rouse the hopes and stimulate the activities of the extreme Radicals and Royalists. The Loubet ministry was at the very beginning of the revelations. Having refused the committee's demand that Reinach's body be exhumed and evidence of suicide, the government met an adverse vote of November 28. M. Brisson, the chairman of the committee, to form a cabinet, the old body was reorganized with M. Ribot. Great facilities were now given to the committee for its work. It demanded full judicial powers in securing papers, forcing witnesses to testify, *etc.*, the government, taking the ground that the republic must be protected, refused the demand and on the test vote of November 16, secured a majority of 271 to 265. Holding that the president of the republic amid the prevailing excitement required stability, Ribot retained office in spite of the scanty majority. But on the test vote of the 17th the vote M. Rouvier, the minister of finance, resigned, and the revelation that he had used Panama money for the secret purchase of arms against Boulangism. Then followed evidence that Floquet, president of the Chamber, and Freycinet, minister of war, had been implicated in the same way, and though the government got a vote of confidence on November 23, a reorganization was necessary immediately after. Ribot still held the first place, but after January 10 Freycinet disappeared from the list, and Floquet failed of re-election to his position in the Chamber. Throughout January, February and March the government successfully met the repeated attempts of the opposition to overthrow it, generally on the ground that it was seeking to delay the prosecution its implicated friends. The bribery trials in March disclosed a number of incidents which, involving former associates and former ministers, seriously weakened the government's position, and finally, on March 24, succumbed to an adverse vote on a clause in the budget. The government formed April 3 by M. Charles Dupuy contained mostly unfamiliar names and devoted itself to finishing up the budget work and maintaining the routine administration till the approaching general elections. An extension for twenty months of the Panama Canal Company, which had been granted by the Colombian government, under very strict conditions, in April. — Much comment was caused by the election of Jules Ferry as president of the Senate. This triumphant retired statesman was followed just a month later by his successor, Cardinal Lavigerie died November 24.

**AUSTRIA-HUNGARY.** — In the Cisleithan part of the empire political interest has found little excitement save in **Count Taaffe's troubles** in getting a majority for the government in the Reichsrath. This body met November 5, and shortly afterward the minister delivered a speech of so pronounced a leaning toward Clerical-Conservative ideas that the German Liberals, on whom his majority had depended, promptly went into opposition. The routine government legislation came to a standstill, and provisory appropriations were made pending negotiations. About the first of February Count Taaffe presented a formal program on which he asked a coalition of the leading fractions in support of the government, but the German Liberals were not induced to abandon their policy of the "free hand." By delicate management the government finally secured its budget late in March and prorogued the Reichsrath. — **Politico-religious questions in Hungary** have dominated the situation. A general scheme of legislation was submitted to the emperor early in November, embracing projects for making civil marriage compulsory, for civil registration of births, deaths and marriages, for legalizing the free exercise of all religions and for recognizing fully the Jewish faith. On the 9th Count Szapary announced that he had not been able to secure the emperor's approval of the bill for civil marriage, and the ministry accordingly resigned. Two days later a new cabinet was formed, with Dr. Alexander Wekerle, hitherto finance minister, at its head. The program of this ministry announced that all the above bills except that on civil marriage would be pressed for passage, and that a new bill on the latter subject would be framed, the emperor's objections having extended only to details. Throughout the winter the clerical opposition to the proposed marriage law developed a veritable *culturkampf*, with abundant charges that imperial influences were aiding the opponents of the project. A request by the minister of public worship that a bishop should be rebuked for a violent pastoral against the government, was refused by the emperor, in January, on the ground that he had no constitutional right to interfere. In the budget debate in March the whole religious question was discussed with great violence. The ministry has not yet introduced the proposed civil marriage law, but the bills for civil registry and for recognition of the Jewish faith were laid before the Chamber April 26.

**ITALY.** — The general elections of November 6 resulted in an overwhelming victory for the government's supporters. The extreme radicals suffered especial losses. **Parliament** was opened by King Humbert in person November 23. A favorable financial prospect was reported by the ministry, but the attention of both government and country became almost entirely absorbed in a bank scandal that developed in January. It was made public that the chief bank of issue, the *Banca Romana*, had put forth notes to the amount of 65,000,000 lire in excess of what the law permitted, and charges of complicity in this and other grave irregularities in the banking system were freely made against high public officials, both in the present and in preceding ministries. Premier Giolitti held his majority in resisting

persistent demands for a parliamentary investigation, and the tutored by the judicial authorities resulted in the arrest of several a department chief in the Ministry of Commerce and a single last two on charges of corruption. As evidence was discovered political personages had had relations with the delinquent banks finally consented to a committee of the House to investigate these relations. It was strongly suspected that the government, as in France, had been in the habit of getting financial assistance from banks in electoral campaigns. The expectation that the Government would be seriously shaken by the revelations has not as yet been realized.

**SPAIN.**—In a number of places the tendency to popular discontent continued to express itself in riots. Most important was that of November 2, the occasion of which was the failure of the royal visit to the city for the unveiling of a statue of Columbus, but the high-spirited spirit of which was shown in cheers for the republic.—The **ministry** was precipitated by a split in the Conservative cabinet on the question of dealing with grave corruption in the municipal administration of Madrid. Immediately after the meeting of the Chamber a vote of censure was refused, December 7, by 129 to 121, and the Cabinet resigned. The Liberal leader, Sagasta, formed a new cabinet and suspended the session of the Cortes. Having made the customary change in the *personnel* of the electoral administration, the government met the Cortes and set March 5 as the date for general elections. The result of the voting was the usual success of the government, who secured 235 of the 430 members of the Chamber. Most significant in the results were the great gains made by all the discontented fractions, especially the republicans, who were successful in 39 constituencies, including six out of ten in Madrid. Premier Sagasta's position is not regarded as weakened by these radical differences, especially as to commercial policy, divided as the country is. The efforts to reduce expenditure by economies in administration in the army and navy, have aroused popular resistance in many provinces, though the speech from the throne at the opening of the Cortes announced the abolition of the deficit, the statement was not altogether conclusive.

**RUSSIA.**—Minor incidents in the general social discontent resulting from the anti-Jewish movement, the famine and the cholera, formed the staple of the news from Russia during the past year. The review. The latter two influences have been rather quiescent, but evidence of recrudescence in the former has appeared. In January a decree was issued excluding from residence in Moscow, Jews who, under former laws, had acquired by military service the right of residence anywhere in the empire. The Moscow Chamber of Commerce adopted a resolution excluding Jews from the list of merchant firms, and changed their faith, and such as complied with the latter condition were required to pass a three years' probation at a village near Moscow.

close supervision of the clergy, whose report will be conclusive as to the sincerity of the conversion. In December it was decided that Jewish artisans could only live in places outside the pale where there are official trade-boards, that is, in only about ten or fifteen per cent of the towns. — Finance Minister Witte's budget for 1893 proposed an exact balance of total income and expenditure at 1,040,458,385 rubles. Both sides of the account showed a considerable increase over last year, which was provided for by raising the excise taxes on spirits, beer, tobacco and other articles and by a new internal loan. One cause of extra expense is the construction of the railway across Siberia, which has recently been begun.

**MINOR EUROPEAN STATES.** — The course of the constitutional revision in Belgium has been affected by incipient revolution. Much popular dissatisfaction was aroused in November by the action of the Chamber's committee on revision, in rejecting propositions looking to universal manhood suffrage; and after the publication in January of the government's completed project, fixing a household and educational qualification, agitation among the working classes became incessant. The formal discussion of the revision began in the Chamber at the end of February, and about the same time the Radical leaders instituted in Brussels and a few other places a popular vote on the question of suffrage, which resulted in an impressive majority for manhood suffrage, with a twenty-one years' age limit. On April 11 the Chamber came to a formal vote on the Janson project, which was that of the Radicals, and rejected it by 115 to 26. A modification, making the age limit 25 years, met the same fate. Immediately the labor leaders ordered a general strike, and street rioting began in Brussels and other cities, which the police and militia were only with increasing difficulty able to keep in check. Meanwhile, several compromise projects on the suffrage question were discussed by a committee of the Chamber, and on the 18th one was reported favorably, which provided for manhood suffrage at 21 years, with plural voting on the basis of property and education. The Chamber, with some manifestation of deference to the prevailing excitement, adopted the proposition on the same day by 119 to 14. At the announcement of this action the commotion quickly subsided, and the labor leaders, while protesting against the plural vote, nevertheless called off the general strike. The Senate adopted the Chamber's project April 21. — **The crisis in Norway** assumed in April precisely the form which it had in June, 1892 (see last RECORD, p. 781). The Storting met February 2, and the Radicals, rejecting overtures from Sweden looking to an adjustment of the questions at issue, brought in a resolution declaring Norway's right to independent action in all matters not specifically designated as federal in the Act of Union, and asserting that the consular system was such a matter. This resolution was carried March 17. The Swedish houses of parliament passed resolutions by great majorities denying the claims made in this resolution. On April 22, the king having refused his assent to the Norwegian resolution, the Steen ministry resigned, and two



days later the Storting suspended sittings indefinitely. At the RECORD, M. Stang, the predecessor of Steen, was trying to form a — **Politics in Serbia** have been of an unusually lively character that rarely torpid kingdom. First, a great sensation was created by the announcement, January 19, that Milan and Natalie, the divorced King Alexander, had become reconciled at Biarritz. Whether of political significance was unknown, but rumor connected it with incidents bearing on the pending elections. The Skupshtina was dissolved in November, and the Liberal government, by energetic measures, reorganized the electoral machinery in such shape that at the voting in March a Liberal majority was secured in the place of the enormous Radical majority that had controlled the former legislature. When the Skupshtina was re-elected, April 6, the Radicals, in resentment at certain proceedings of the government designed to increase its majority, left the hall and refused to take part in the session. The troublesome situation thus produced was wholly abolished by a *coup d'état* of King Alexander, April 11, at a banquet in the palace, at which the regents and cabinet were present. The king suddenly accused them of misrule and demanded their resignation, saying that he would assume the government himself. On the next day the regents to resign he ordered them under guard, and on the same day a new ministry was appointed, with M. Dokitch, a Radical, as premier. Careful arrangement of the troops had insured that no resistance was made to the king's acts, and no blood was shed. The constitution provides that at eighteen the age at which the king attains his majority, but Alexander was not yet seventeen. His action was greeted with general favor throughout the country. An explanation of the affair is found in the ill-dispositions of the Radicals with the pretender Karageorgiewitch, and in the fear of Milan and Natalie that the hostile policy of the regents toward the Radicals, who are in a majority in the land, would precipitate an overthrow of the reigning dynasty. The program of the new ministry denounces the unconstitutional acts of their predecessors, and proclaimed that the government should be entirely free from governmental influence. — A bill for the **amendment of the Bulgarian constitution** secured the necessary two-thirds majority in the Sobranje in December. The chief changes proposed were: An increase of cabinet ministers from six to nine; a decrease of members in the Sobranje from one member for every 10,000 to one for every 30,000 inhabitants; and a provision permitting an elected prince to ascend the throne, and his first successor, to profess another religion. This last clause was in anticipation of the marriage of Prince Ferdinand, April 20, to the Catholic princess, Marie of Savoy, of Parma, a sister of the future Empress of Austria. The parents of the bride had insisted that the children of the marriage should be educated as Roman Catholics. The amendments require still the concurrence of the Great Sobranje, elections for which were held April 30. — The difficulties of Portugal caused another change of ministry in



Ribeiro succeeding Ferreira as premier. The deficit for 1891-92 amounted to \$17,500,000.

**AFRICA.**—The relations of **Great Britain and Egypt** were brought into a clear light by an incident in January. On the 15th of that month the young khedive suddenly dismissed his prime minister and two other members of the government, and appointed new men in their stead. The step was taken without consultation with the British representative, Lord Cromer, and the appointee as premier, Fakhri Pasha, was known to be a leader in the anti-English party in Egypt, which ever since the accession of the Khedive Abbas had been increasingly influential. A considerable stir in cabinet circles in London resulted in a vigorous despatch to Lord Cromer, who was instructed to inform the khedive that the British government expected to be consulted in all important steps, and especially in respect to changes in the ministry, and that it could not assent to the appointment of Fakhri Pasha. On the 18th the khedive agreed to revoke this appointment, but asked that instead of restoring the former premier he might appoint Riaz Pasha to the position. To this Lord Cromer assented, and the diplomatic incident was closed. Considerable anti-English feeling continued to be manifested in various ways by the populace and to receive encouragement from the khedive, and in February the number of British troops at Cairo was increased to about 6000. England's actions were closely watched by the other powers, especially by France, but were in every case accompanied by formal assurances from London that no change of policy was intended. The Egyptian financial reports for 1892 reveal a continuance of the surplus, though on account of remissions of taxation the figure, £788,000, is less than before.—In **Morocco** the French commissioner, Count d' Aubigny, after a long and vexatious sojourn at Fez, came away in December with a number of not very important commercial concessions from the sultan, in return for the French minimum tariff. Rumors of important political agreements, especially as to boundaries with Algeria and on the south, appear to have been unfounded. An English special commissioner, Sir West Ridgeway, was sent in January to Tangier, in order to retrieve the failure of Sir Euan Smith, noticed in the last RECORD. This step, together with a pretty vigorous demonstration, both diplomatic and naval, effected a concession of indemnity for certain outrages on British subjects perpetrated by Moorish soldiers at Tangier.—The French conquest of **Dahomey** was practically completed by General Dodds on November 16, when after some hard fighting the army entered the capital, Abomey. King Behanzin escaped with a small band of followers. The blockade of the coast was raised in December, and steps have since been taken toward the organization of government for the conquered region. Toward the end of April Behanzin made overtures looking to his formal abdication and surrender on the condition of a pension from the French government.—The British government announced in November that a commissioner would be sent to look after affairs in **Uganda** when the East Africa Company should

abandon it. Accordingly, Sir Gerald Portal set out from the January with a considerable force, and reached Uganda in March. The **Congo State** the Arabs on the upper Congo, who after the of the whites last summer became very aggressive, were thorough in a pitched battle, November 22, by the Belgian forces.

**JAPAN.** — The politics of this country throughout the winter a contest between the legislature and the government, of a familiar in Europe. The government's most important measure thrown out, and its budget estimates were greatly reduced by the house. When the government refused to yield the house suspensions, "to give the government time for more mature reflection" opposition members petitioned the emperor to set matters right. It came, when the chamber reassembled, in an imperial decree suspending sittings for fifteen days. At the end of this time (February 7) the emperor sent to the house a message expressing regret at the differences between the government and the Assembly, and stating that as he could not agree to reductions in the naval estimates demanded by the latter, he had voted \$225,000 annually for six years to be devoted to the navy out of the treasury list, and had reduced all governmental salaries ten per cent for the same purpose. Under the influence of this act a better feeling prevailed, and a compromise was reached on the budget, while several liberal amendments desired by the opposition, *e. g.* amendments to the laws governing the press and public meetings, were allowed by the ministry to be passed.

**LATIN AMERICA.** — While no startling incidents have been reported from this part of the world, the general indications have pointed to a continuation of affairs which can hardly be called satisfactory. Mexico has a continuance of border brigandage, with revolutionary tendencies. Rio Grande, seems to have maintained a progressive condition. Brazil has produced but one important revolution. This was in Rio de Janeiro, where a revolt led by Gen. Bonilla, beginning in March, and ending at the end of April met with considerable success. Brazil has been in trouble with the "federalists," or state-rights party, in different parts, the most important centre of disturbance being in Rio Grande do Sul, where a considerable triumph of the malcontents was reported in March, but was denied by the government. In Argentina some improvement seems to have been made in the financial situation, and a satisfactory arrangement of boundaries has been reached with Chili; but a revolt of serious character in the province of Catamarca was reported early in April. An alliance between Chili and Bolivia was announced in February, and the latter secured a port on the Pacific coast. This concession is regarded as a return for the recognition accorded by Bolivia to the Corrientes party in the late civil war in Chili.

WM. A. D.

## POLITICAL SCIENCE QUARTERLY.

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### GIFFEN'S CASE AGAINST BIMETALLISM.<sup>1</sup>

MR. GIFFEN, belated, still sits in the seat of the scornful. Bimetallism is to him "a mere delusion," and his language toward its advocates—M. de Laveleye in particular—is hardly parliamentary. He classes them with "the prophets who prophesy that the world is to be enriched by abundant money," and these, he says, "are the detestation of men of sense." Of the bimetallist theory, his judgment, summed up in the fewest words, is as follows:

It was the unbroken experience of centuries when Locke took up the question, as it has been the experience ever since, that side by side with the legal ratio there is immediately a market ratio; and there is no discernible tendency for the former to govern the latter. The foundation of the bimetallic idea is thus rotten from the beginning, and there is no discoverer or great economist to set against the chain of authorities by whom the opposite system has been established.<sup>2</sup>

Such, in brief, is Mr. Giffen's spirit, and such, in brief, are his views. As to the former, little need be said. The spirit of scorn is so far from being the spirit of science, that it almost precludes the learning of anything new; and in a measure this accounts for Mr. Giffen's retention of ideas which were unanimously expressed by the International Monetary Conference at Paris in 1868, but which are no longer upheld by a majority

<sup>1</sup> The Case Against Bimetallism. By Robert Giffen. London and New York, George Bell and Sons, 1892. — 12mo, with index, 354 pp.

<sup>2</sup> Page 112.

even of the monometallic half of the Gold and Silver Standard Commission of Great Britain. The scorn of the scoundrel has always been a favorite theme for the irony of his contemporaries. In Mr. Giffen's case time's revenge is being taken more than usual. Hardly had our author penned his abuse of the advocates of bimetallism, when M. de Laveleye, who had thought of replying to Mr. Giffen, whom he always treated with a courtesy the latter never returned, had the opportunity of quoting the following lines from Professor Foxwell of Cambridge, descriptive of scientific opinion in England:

Cambridge University: Professor Alfred Marshall, bimetallist. Professor Sidgwick, bimetallist. Edinburgh: Professor Cairnes, author of an excellent book on the subject, vice-president of the Bimetallic League. Oxford: Thorold Rogers admits the superiority of gold, rejects bimetallism. University College of London: Professor Foxwell, vice-president of the Bimetallic League. Nottingham: Professor J. E. Symes, bimetallist. Liverpool: Professor E. C. Kibble, vice-president of the Bimetallic League. Manchester: Professor J. E. Munro admits the bimetallic theory. London, King's College: Professor Edgeworth inclines toward bimetallism. . . . But he refuses to admit that a fixed ratio between gold and silver is established and maintained by international treaty is no longer considered among us an economist.

This quotation from Professor Foxwell is merely a concession to the unscientific portion of Mr. Giffen's book — his invocations of scorn for his opponents, and his appeals to authority to settle the question at issue. Questions of science may be settled by such appeals; but the question at issue is primarily one of social justice, and on such questions the average citizen is as likely to be in the right as the most eminent scientist. Appeals to names are therefore no more scientific as appeals to numbers. Mr. Giffen himself cannot afford to have any other rule adopted than that his arguments be taken at their own weight, counting for none or nothing because of the dead authorities in their favor, and thrown out of the scales by the living authorities who contradict them.

In spite of his belief that a fixed ratio between the two metals cannot be maintained, Mr. Giffen is an economist of the first rank, and in the volume before us he has done as much as any living writer to clarify the discussion of bi-metallism. The events of the last twenty years, which have changed the opinions of most of his contemporaries, have not affected those of Mr. Giffen, but he has recorded these events with scientific impartiality. If he has learned nothing from them, he has at least forgotten nothing that was established before. It is an inestimable gain to have a statement of the facts in the case to which both parties must agree, and it is a further gain to have an argument from a monometallist who refuses to reverse his old creed wherever such reversal will support the clamor of creditors against the demands of debtors. The arguments he rejects and the arguments he advances are equally worthy of examining, for he always speaks as a scientist, not merely as an attorney.

The monometallist arguments that Mr. Giffen rejects are briefly as follows:

1. That there is gold enough for an international gold standard.
2. That debtors have not been seriously injured by the appreciation of gold during the last twenty years.
3. That this appreciation of gold has not been due to the successive demonetizations of silver and the consequent demand for gold outrunning production.
4. That the unit of value ought to increase in value.

It is a pity that it should be necessary to state that Mr. Giffen concedes the scarcity of gold; there is no fact so important as this scarcity, and none so completely ignored by American monometallists. At the Paris conference of 1868, when every one favored an international gold standard, there was some reason why every one should favor it. During the two decades preceding, the trouble with the currency had been rather that too much than that too little gold and silver had been mined, and there had been reason for the fear that the unit of value was falling in value. What the increase in



production had amounted to is shown by the following condensation of Soetbeer's tables :

|                 | Annual production<br>of gold. | Annual production<br>of silver. |
|-----------------|-------------------------------|---------------------------------|
| 1831-1850 . . . | \$26,000,000                  | \$30,000,000                    |
| 1851-1870 . . . | 136,000,000                   | 48,000,000                      |

It appears thus that the yearly production of gold actually became two and a half times as great as the production of the precious metals had been during the earlier part of the century. Although this enormous influx of money was accompanied by an unprecedented increase in wealth and a still more unprecedented increase of wages, the creditor classes suffered some injury ; for the money in which they were being represented appreciably less property than the money that had been loaned.<sup>1</sup> Under such circumstances the argument in favor of an international gold standard was a telling one. Before 1873, however, this argument has entirely disappeared. The world's commerce has gone on expanding, while the supply of gold available for currency, instead of expanding with it, has actually fallen off, and the non-monetary consumption

<sup>1</sup> On this point Soetbeer's tables, while entirely accurate, are misleading as his standard of prices the average during the years 1847-50, however, were the years in which prices were most abnormally low as compared with the period preceding as well as the period following. The average during the decade between 1860 and 1870 were but six per cent higher than the average during the decade between 1840 and 1850, and the average for the twenty years preceding the Californian and Australian discoveries were actually lower than for the twenty years preceding. Soetbeer's tables are so frequently thought to indicate injury to debtors through the appreciation of gold during the last twenty years simply counterbalances the injury to creditors during the period preceding. It is worth while to show by Jevons's tables how Soetbeer selected his standard of comparison.

|                               | Jevons's<br>index number. | Soetbeer's<br>index number. |
|-------------------------------|---------------------------|-----------------------------|
| Average prices 1820 . . . . . | 103                       |                             |
| " " 1830 . . . . .            | 81                        |                             |
| " " 1840 . . . . .            | 87                        |                             |
| " " 1847-50 . . . . .         | 69                        | 100.                        |
| " " 1860 . . . . .            | 79                        | 120.98                      |
| " " 1865 . . . . .            | 78                        | 122.63                      |

In other words, Soetbeer affixes the index number 100 to the very lowest point in the long period of commercial depression which resulted from the overproduction of the money metals during the first half of the century.

has enormously increased. It may be permitted me to recall Soetbeer's figures upon this point. Between 1851 and 1870, says Soetbeer, the new supply of gold available for currency averaged \$92,000,000 a year ; between 1871 and 1881 it had fallen to \$24,000,000.<sup>1</sup> Mr. Giffen (page 85) goes even beyond Soetbeer in his admissions upon this point. Here is what he says:

About two-thirds of the gold annually produced is taken for the arts ; and if the consumption of India is included, as being either for simple hoarding or for the arts and in no case for the purpose of circulating money, then *the demand for gold for non-monetary purposes appears almost equal to the entire annual production.*

The italics are mine, and the use of "small caps." would seem almost permissible when one finds in the most scholarly of the monometallist papers of New York City such a solution of the silver question as the following :

The simple fact is that if we need more money, we can supply our deficiency with gold just as easily as with silver. Suppose that we take the present Sherman Law and substitute the word gold for silver wherever it occurs, making the proper change in the number of ounces purchased. . . . Such a law would give us everything in the way of additional currency that we get under the Sherman Law. There is nobody so dull that he can not see that.

There is something peculiarly delicious about this statement, but in its misconception of the facts at issue it differs in no way from the whole body of monometallist attacks upon the Bland Bill and the Sherman Act. The United States is using \$50,000,000 of silver a year to supply its need of more currency.<sup>2</sup> The annual supply of gold available for money uses is estimated at \$24,000,000 by Soetbeer and at next to

<sup>1</sup> Soetbeer's table condensed is as follows :

| Period.     | Production<br>of gold. | Non-monetary<br>consumption. | Used for<br>money and reserves. |
|-------------|------------------------|------------------------------|---------------------------------|
| 1851-70 . . | \$136,000,000          | \$44,000,000                 | \$92,000,000                    |
| 1881-85 . . | 104,000,000            | 80,000,000                   | 24,000,000                      |

<sup>2</sup> As prices have not risen, there is no evidence that this issue is excessive.

nothing by Giffen. Austria and Russia<sup>1</sup> have already taken part in the scramble for this \$24,000,000, and it is gravely proposed that the United States shall meet an additional demand for \$50,000,000! Adam Smith contemplated the possibility of gold becoming as valuable as diamonds. Apparently such a consummation would be a catastrophe to the reckless spokesmen of the creditors who are demanding that the United States shall use gold when it is now using silver.

So much, then, for the utter insufficiency of the gold supply. Mr. Giffen's admissions on this point are all that a list could desire. Next as to the effect of that insufficiency in raising the value of gold and increasing the burden of the debt measured in gold. Here again Mr. Giffen's statistics are substantially those which bimetallists are trying to get before the public. In the essay on "Some Bimetallist Fallacies" written in 1886, Mr. Giffen grants without discussion that the fall in general prices during the fifteen years preceding 1870 has been "about twenty per cent in gold" while "hardly perceptible in silver." The estimated fall of twenty per cent in prices during the fifteen years following 1870 does not differ greatly from the estimate made by Sauerbeck last autumn. The fall in prices has now reached over thirty per cent. Giffen, it will be seen, admits the contention of the silverists that an ounce of silver will to-day buy substantially as much as it ever. The point Mr. Giffen urges here against bimetallism is that even if bimetallism had continued in operation, prices would still have fallen ten per cent, as against the fall of twenty per cent that has undoubtedly occurred." This is a most pleasing point to have presented by a monometallist. It is much the same point as is made by Mr. Bland, when he says that under free coinage a silver dollar would continue to be worth as much as a gold dollar, since gold would simply lose its official value given it by the demonetization of silver, and

<sup>1</sup> In the London *Economist* of November 19, 1892, will be found that the gold reserve in the Imperial Bank of Russia had been increased in the last five years \$120,000,000. The Sherman Act increased our silver purchase to \$20,000,000 a year.



would gain the value of which governmental discrimination has deprived it. Mr. Giffen's contention that even a double standard dollar would buy more than formerly is the best evidence of the moderation of the bimetallists' demand.

As to the cause of the increased value of the unit of value, Mr. Giffen is equally satisfactory. He says, for example, on page 74 :

A fall of prices from period to period is substantially due, as I have more than once pointed out in former years, to the necessary difficulty of increasing the stock of precious metals [note the plural] so as to keep pace with the multiplication of commodities and the multiplication of the number of the people.

And again, on one of his concluding pages, he sums up in this way :

There is always and necessarily a direct relation between the quantity of money, that is, the quantity of the standard monetary substance in the market or that can be brought into the market, and prices . . . We see then how widely mistaken those monometallists have been who, in their dislike of bimetallism, have denied that the recent great demands for gold in proportion to its supply were likely to have caused a rise in its exchange value for other things. [Page 219.]

There seems hardly need of argument in support of Mr. Giffen's position on this point. Those who contend that the rise in the value of gold during the last twenty years has not been due to the recent great demands upon it in proportion to its supply, but to improved methods of production, forget that during the preceding twenty years the same improvements in production were going on, yet money values did not fall. During the last forty years the production of wealth has gone on increasing at a uniform rate ; during the first twenty of these years the production of gold and silver increased proportionately ; during the last twenty silver has been demonetized and the production of gold has fallen off. The change that has taken place can be traced not to the factor that has remained constant — the production of wealth, but to the factor that has changed — the production of money.

Mr. Giffen does not belong to that school of monometallists—in this country frequently protectionists—who urge that each nation must have the same standard as its neighbors, because of the commercial relations between them. He takes it for granted that the foreign commerce of a country is no more affected by the standard it employs than by the number of grains of metal in its unit. In any event the rate of exchange must be determined, and it was as easy, for example, to determine the exchange value of Austria's old silver florin as it is to determine that of her new gold crown. The argument in favor of gold based on its alleged advantages for foreign commerce is worth no more than the argument in favor of silver based on its alleged advantages for foreign commerce. Each argument ignores the fact that no change in measuring-rods can give the merchants of one country an advantage over the merchants of another.

But not only does Mr. Giffen recognize the truth of this elementary proposition; he also recognizes the fact that the adoption of gold by so many nations was a distinct reason why other nations should not adopt it.

Much of the great currency mischief for many years past has arisen from the fact that governments have not left the thing alone. The primary offender in this matter perhaps was Germany, which made a mistake, as I believe, in substituting gold for silver as the standard money of the country. . . . To some extent Italy also has been an offender in this matter, the resumption of specie payments in that country on a gold basis being entirely a work of superfluity; the resumption on a silver basis would have been preferable. [Page 78.]

Elsewhere (page 116) he expresses the belief that the mistake made by these nations is one "which the nations of the world are not now likely to be guilty of." Inasmuch as Austria has just been guilty of it, Mr. Giffen's optimism in this matter reminds us of that of Jevons when he wrote many years ago:

I am far from denying that if the Italian government decide to carry into effect M. Luzzatti's threat of buying gold at all hazards, and

if the like course be taken by the United States and France, not to speak of Germany, there might be considerable disturbance of values for a time. But is it likely that such proceedings will be taken by rational statesmen and rational parliaments? It is really too absurd to suppose that any country will insist upon having a gold currency at any cost.

Both of these scientists forgot that the currency problem represents, not a conflict of opinions, but a conflict of interests. The policy that is an absurdity for the nation embodies the most obvious self-interest of the creditor classes; and these classes despotically rule the governments everywhere except in the United States and Great Britain.<sup>1</sup> These classes, which a generation ago, when silver became the scarcer metal, demanded an exclusive silver standard, and actually secured it in Holland and Belgium, have been demanding an exclusive gold standard ever since gold became the scarcer metal. Here is the record of their success:

1872. Norway, Sweden and Denmark substitute the gold standard for the silver standard.

1873. The United States unconsciously<sup>2</sup> demonetizes silver. Germany substitutes the gold standard for the silver standard and begins to sell silver. The Belgian parliament authorizes the government to suspend the coinage of silver.

1874. France and the entire Latin Union suspend the free coinage of silver, France substituting the gold standard for a double standard.

1875. Holland, having suspended the coinage of silver in 1873, now formally demonetizes it, and substitutes the gold standard both for herself and her East Indian colonies.

<sup>1</sup> Though England is by all odds the greatest creditor nation in the world, and her citizens pay the income tax on \$5,000,000,000 of foreign investments, yet justice to debtors is far more regarded by her parliament than by any parliament on the continent.

<sup>2</sup> An examination of the debate shows that some Congressmen knew that silver was demonetized in the act of April 12, whose avowed purpose was to codify the mint regulations. Even these Congressmen, however, attributed no practical importance to the fact, and did not dream that they were altering existing contracts by denying debtors the right to pay in the cheaper metal.

1873-75. The Bank of France retires \$350,000,000 of paper money, and greatly increases its gold reserve.

1879. The United States resumes specie payments in gold.

1883. Italy purchases gold to resume specie payments.

1891. Austria, which for several years has had a paper currency payable in silver, but above par in silver bullion, openly abandons the silver standard and substitutes gold.

Not only, then, has the production of gold fallen off since 1870, and its non-monetary consumption enormously increased, but all these nations have added to the governmental demand for it. No wonder, therefore, that Mr. Giffen is unwilling to join himself with those who deny that the unit of value has risen in value because of failing supply and enormously increased demand.

This brings us to the last of Mr. Giffen's concessions. He recognizes that the unit of value ought not to increase in value. Here of course he has all the classic economists on his side, Hume having even urged that the unit of value ought gradually to decrease in value. Mr. Giffen is not a socialist, and he has too much intellectual honesty to contend that between debtor and creditor, any more than between employer and workman, equal amounts of labor instead of equal values ought to be exchanged. Between nations and between individuals the labor unit is entirely discredited. When we buy goods of India, we do not pay the same amount of labor we receive, but the same value of labor. When a political economist employs a cook, he does not pay her the same amount of labor he receives, but (presumably) the same value of labor. In the same way, where the debtor is a laborer, it is his duty to pay back, not the same amount of labor he borrows, but the same value of labor. If the efficiency of his labor increases, that increase belongs to him and does not increase his obligation to his creditor or the obligations of other debtors to their creditors. Only in so far as the creditors take part in labor are they entitled to benefit by its increasing efficiency. In so far as they are creditors, *i. e.*, holders of property produced by past labor, they are only entitled to the property

which that labor produced; the property produced by present and future labor belongs to those participating in its production.<sup>1</sup> This brings us back to the real point to be considered. It is not labor that is borrowed and loaned, but property — the products of labor. Nothing is clearer, therefore, than that the unit in which debts are measured ought constantly to represent the same amount of property or products of labor. This is precisely what it has failed to do since the demonetization of silver, and Mr. Giffen fully recognizes it. In another essay, "The Growth of Capital" (not included in the present volume), Mr. Giffen found that while the money value of the capital of the United Kingdom had increased 44 per cent during the decade 1865-75, it increased but 17½ per cent in the decade 1875-85. "Something," he says, "must have happened to diminish the rate of the accumulation of capital as expressed in money."<sup>2</sup> This something he found to be the appreciation of gold. In 1885 he estimated that the same amount of gold represented fifteen per cent more property than in 1875. This change of fifteen per cent during the decade<sup>3</sup> corresponds to a change of nearly thirty per cent during the two decades since the demonetization of silver. In other words, the appreciation of gold has added nearly thirty per cent to the amount of property which creditors may require of debtors in discharge of obligations.

This completes the list of Mr. Giffen's concessions — a list much more important than that of his contentions, since around it the whole controversy in America has been waged. The American monometallists have shown themselves much better politicians than Mr. Giffen, though much worse scientists. In refusing to admit that the inadequacy of the supply of gold to

<sup>1</sup> This proposition has on its side not only the instincts of all plain people, but also the authority of the classic economists. It is not worth while, therefore, to examine the statistical exaggerations of the advocates of an anti-socialistic labor unit.

<sup>2</sup> *The Growth of Capital*, p. 46.

<sup>3</sup> "It is most important, in fact, to keep in mind that we are not dealing here with the whole fall of prices which has occurred since what is called the appreciation of gold began, but only with what has occurred in a particular period of ten years." *Ibid.*, p. 53.

the increasing needs of commerce has brought about an appreciation in its value which has forced and is forcing debtors to pay creditors more property than they borrowed, American monometallists have shown a shrewd sense of the really important considerations. As politicians they deny the wrong in order to deny the remedy; Mr. Giffen, as a scientist, admits the wrong, but feels no obligation to supply a remedy.<sup>1</sup> The whole burden of his argument is that bimetallism does not furnish a scientific remedy. This he maintains with passionate vehemence. His main theses are as follows:

1. That it is not the function of government to manage the currency.
2. That "whatever governments may say, it does not follow that great commercial communities will be obedient."
3. That governments could not agree upon a bimetallic plan.
4. That governments never did keep the two metals at a fixed ratio.
5. That governments never could keep the two metals at a fixed ratio.

The first of these contentions requires but a word. Mr. Giffen's clients, the creditors, would be the last persons in the world to deny that it is one of the prime duties of government to protect creditors from the evils of inflation through unregulated bank issues. Without controversy it is equally the duty of the government to protect debtors against the evils of contraction. What Mr. Giffen says about the incompetence of a government, "especially a democratic government," to deal with this question, is the veriest Herbert Spencerism. The enforcement of justice between debtor and creditor is as important as the enforcement of justice between any plaintiff and any defendant. The power can be safely lodged nowhere except with the government, and it can be impartially adminis-

<sup>1</sup> There is a suggestion of a paper-money remedy in certain isolated sentences like the following: "A country rising in the economic rank advances from the use of copper and nickel mainly to a larger use of silver; from silver in the same way to gold; and from both silver and gold to paper and other substitutes for metallic money" (page 96).

tered only by a government which is as much concerned for the interests of debtors as for the interests of creditors.

Mr. Giffen's second contention — that governments would be powerless to secure the acceptance of bimetallism by the mercantile communities under them — is also unsustained by his clients. With a true instinct as to their strongest plea, they assert that according to Gresham's law the dearest metal would at once disappear from circulation, and only the cheaper one remain. As Mr. Giffen himself accepts this law, it is difficult to understand how he can doubt the power of the government to force upon the public the money which he maintains would be the cheaper. According to Gresham's law the people would soon use nothing but the cheaper.<sup>1</sup> Mercantile communities are to-day using exclusively gold, because government interference prevented the natural operation of Gresham's law.

Mr. Giffen's third contention, that it is impossible to secure international agreement upon a bimetallic plan, is much more forcible. It is true that if monometallism loses as rapidly during the next twenty years as it has lost during the last twenty, there will be none left to defend it. Yet even when monometallism shall have been abandoned, the creditor classes

<sup>1</sup> Mr. Giffen's history at this point has some resemblance to his logic. The two examples he gives of the power of mercantile communities to resist a change in the standard are both American. One is the decision of the New York banks "not to accept any of the [Bland-Allison] silver coins which the government had just issued as full legal tender" ; and the other is the rejection of greenbacks by Californians during the Civil War. As a matter of fact the New York banks only attempted to prohibit the payment in silver of their clearing-house balances. They not only accepted silver as full legal tender for debts, but received it on deposit (see Taussig *Silver Situation in the U. S.*, page 17). Likewise in California the mercantile community was able to resist the operation of Gresham's law only by the help of the provision in the state constitution against the use of paper money, followed by Justice Field's peculiar decision that taxes owed the state government were not debts in such a sense as to be payable in legal tender notes, and the act of the California legislature providing for the enforcement of specific contracts in gold and silver. It may be added that specific contracts of this sort were forbidden by the French government in behalf of the notes of the Bank of France during the Prussian war. Had Congress protected its own notes in the same way, the legislature of California would have been as powerless to prevent the use of greenbacks as her mercantile community found itself without legislative assistance.

can still for an indefinite period control certain nations in resisting the establishment of the old ratio. It is not likely that any great nation whose government is heartily opposed to the wrongs monometallism inflicts upon the debtor class will await international agreement before taking action. A nation heartily opposed to the taxing of the poor would as soon think of awaiting international agreement before adopting free trade.

It is, however, Mr. Giffen's fourth contention upon which he lays the stress of his argument. He devotes an entire chapter to "The Alleged Bimetallism of France, 1803-1873," and elsewhere urges that the belief that governmental action has kept the two metals together is a central fallacy of bimetallists. It is a grief to him that on this point the monometallists on the English Gold and Silver Commission united with the bimetallists in affirming that the French legal ratio did tend to keep the market ratio the same. He refuses to those royal commissioners the name monometallists, and terms them "non-bimetallists." The facts, he says, have been "steadily misrepresented for years," and he sets to work vigorously to correct the erroneous impression the world has had upon this point. Here is his argument:

In 1886, in a paper read at the Bankers' Institute, I published the figures of the actual premium on gold in Paris on the first of each month for the years 1820-1847—the greater portion of the period—which placed the fact beyond doubt that gold and silver did not pass in all that time at the legal ratio, but that gold varied in price usually between one-half per cent and two per cent premium, with not very frequent and not very lengthened lapses below one-half per cent and not one date being mentioned on which there was not a premium of some sort. These premiums were quite sufficient to make the practice different from the law. At anything over even one-quarter per cent premium for gold,<sup>1</sup> no man alive would pay a debt in gold that he could pay in silver without a premium, and consequently the demand for gold for standard and for unlimited legal tender in France was all this time in suspense. . . . When I wrote the paper for the Bankers' Institute, I had

<sup>1</sup> Or even one-hundredth of one per cent.



no figures for the period from 1803 to 1820 before me; but I may now refer to the ratios of Soetbeer.

Here follow portions of Soetbeer's tables giving the ratio between the average prices of gold and silver bullion in the London market between 1803 and 1873. The French ratio is 1 to 15½ and the extreme variations during each decade are as follows :

|              |          |              |          |
|--------------|----------|--------------|----------|
| 1803 . . . . | 1: 15.41 | 1849 . . . . | 1: 15.78 |
| 1808 . . . . | 1: 16.08 | 1850 . . . . | 1: 15.78 |
| 1813 . . . . | 1: 16.25 | 1859 . . . . | 1: 15.70 |
| 1814 . . . . | 1: 15.04 | 1861 . . . . | 1: 15.19 |
| 1820 . . . . | 1: 15.62 | 1862 . . . . | 1: 15.35 |
| 1821 . . . . | 1: 15.95 | 1869 . . . . | 1: 15.60 |
| 1832 . . . . | 1: 15.72 | 1871 . . . . | 1: 15.57 |
| 1833 . . . . | 1: 15.93 | 1873 . . . . | 1: 15.92 |
| 1843 . . . . | 1: 15.93 |              |          |

These tables are likewise published by bimetallists to prove that the free coinage of both gold and silver in France did keep the coins of the two metals at par with each other, and thus established a bimetallic standard. The facts, then, are agreed upon. What about the conclusions?

A moment's consideration will show how far afield Mr. Giffen has gone in maintaining that France was mistaken in believing that she had had the concurrent circulation of the two metals under her bimetallic law. The points he fails to consider are these: (1) Soetbeer's prices are London prices; (2) both Soetbeer's prices and his own are the prices of silver bullion and not of coined silver, and coinage in France, though free, was not gratuitous.

The extreme ratio in the price of silver bullion in London, it will be noticed, was reached during the Napoleonic wars, when trade between England and France was practically suspended. In 1833, when the next lowest ratio was reached, the lowest price of silver in London was 58¾ pence an ounce, while the French mint price was 60⅞. We do not know what was the cost of carrying silver in wagons and ships from London to Paris, but we know that to-day the cost of shipping gold is

three-eighths of one per cent<sup>1</sup> and the cost of shipping silver half a century ago was probably four times as much. To say that silver coin was not at par with gold in France because silver bullion was  $3\frac{1}{3}$  per cent cheaper than gold in London, is as bad reasoning as if one should say that gold coin in Australia was not at par with itself in 1852 because the price of gold bullion in Australia fell to 60 shillings an ounce, while the mint price in London was 77 shillings  $10\frac{1}{2}$  pence. If the cost of transporting gold bullion from Australia to London accounts for its discount of 20 per cent in Australia, surely the cost of transporting silver bullion from London to Paris more than half accounts for the discount of  $3\frac{1}{3}$  per cent in London.<sup>2</sup>

The other half of the discount is accounted for by the charge for mintage in France. Up to 1835 this was  $1\frac{1}{2}$  per cent for silver and three-tenths per cent for gold. Unless silver coin had been worth  $1\frac{1}{2}$  per cent more than silver bullion in Paris, the bullion would not have been brought to the mint; and yet there is but a single year during the bimetallic period when even Mr. Giffen's tables show that gold bullion averaged  $1\frac{1}{2}$  per cent dearer than silver bullion. But this is not all. The mint charge is only a part of the cost of mintage. "The proceedings of a government office," as Thorold Rogers says, "are measured, not to say slow," and during the period of delay the

<sup>1</sup> Norman, *Metal Monetary Systems*, page 289.

<sup>2</sup> Cairnes, *Essays in Political Economy*, page 25. Mr. Giffen has so much to say about the bimetallic fallacy of a "mint price" that it is worth while to quote a few of Cairnes's sentences: "There was at this time no mint in Australia; the increasing requirements for coin could only be met by the transmission of bullion to London, there to be coined and afterwards reimported, and this process required six or eight months at least for its accomplishment. Pending the arrival of the new coins, prices were not, indeed, prevented absolutely from rising; for numerous expedients were in their absence freely resorted to for supplying the place of the ordinary currency; but, nevertheless, prices were by the straitness of the circulation kept very considerably under their natural level, as determined by the cost of gold—a fact which was sufficiently proved by the remarkable fall in the price of gold throughout the whole of this period." The fall referred to was from £3 17s.  $10\frac{1}{2}$ d. per ounce, the London mint price, to 60s., 50s. and, it is stated, in some instances 40s. per ounce. Uncoined silver bullion has never fallen so low in the United States.

applicants' bullion is "dead capital yielding no profit, and not even any interest." The real cost of coinage in France, therefore, was much greater than the charge for mintage, and Mr. Giffen's tables, instead of showing that the two coins could not have circulated together, prove that they must have circulated together, since the bullion of one was never as valuable as the coin of the other.

Even this, however, is not the most decisive point. Throughout this entire period both gold and silver were brought to the French mint and coined. Even in the year 1833, when Mr. Giffen says that gold in Paris was at a premium, averaging nearly 1.6 per cent above silver, \$1,500,000 in gold twenty-franc pieces were issued.<sup>1</sup> Mr. Giffen says with truth that "at anything more than one-quarter per cent premium for gold [or even one-hundredth per cent], no man alive would pay a debt in gold which he could pay in silver without a premium" : and it is equally true that if gold were at any premium whatever, no man alive would pay over one-quarter per cent to get it coined ; for the coin would have simply its bullion value. During the period from 1820 to 1847 \$60,000,000 in gold were issued from the French mint, and in the decade following 1847 \$127,000,000 in silver were issued, showing not only that neither metal reached such a premium that its old coins were converted into bullion, but also that neither metal reached such a premium as to prevent its owners from paying for the privilege of adding it to the coinage.

Mr. Giffen's ancient history of coinage is as defective as his modern history. Apparently conscious that the marvellous uniformity in the ratio of gold and silver bullion in London between 1803 and 1873 would continue to be traced to the bimetallic law in France, he has recourse to the following argument :

There is one remarkable experience of bimetallism, in which unquestionably there were variations in the ratio of gold and silver, in a period about the same as 1803-73, amounting to more than 25 per cent. Dr. Soetbeer gives the following ratios of gold and silver:

<sup>1</sup> See Laveleye, *La Monnaie et le Bimétallisme International*, p. 175.

| Year.               | Ratio.      |
|---------------------|-------------|
| 1581-1600 . . . . . | 11.80 to 1. |
| 1600-1620 . . . . . | 12.25 to 1. |
| 1621-1640 . . . . . | 14.00 to 1. |
| 1641-1660 . . . . . | 14.50 to 1. |
| 1661-1680 . . . . . | 15.00 to 1. |

. . . The experience of 1803-73 is more than set off by the experience of the first half of the seventeenth century.

Mr. Giffen could not have picked out a happier illustration for his opponents. In the first place, during the earlier part of the period covered the currency was not bimetallic. As Thorold Rogers says:

Up to comparatively recent times the currency of Europe was silver. It was so during the middle ages; it was so long after the discovery of the great American mines at the conclusion of the sixteenth century. For all practical purposes gold was not a currency in England till the seventeenth century.<sup>1</sup>

The extraordinary rise in the value of gold in the sixteenth century was due to the change from silver monometallism to incomplete bimetallism, thus creating an enormous demand for gold as currency. Soetbeer's tables show that the production of gold increased one-fourth during this period, while the production of silver fell off one-third. If production governed the prices of the precious metals, gold would have fallen and silver risen. The fact that gold rose twenty-seven per cent by reason of the currency demands, gives an illustration of the power of governments to regulate the price of the precious metals that is second only to the illustration afforded by the success of national bimetallism in France. The natural comment of Thorold Rogers upon the history of this very period is as follows :

The principal and important inference that one can draw, and with absolute confidence, as to these early prices of gold, is that the fundamental cause of value in the precious metals is their use as currency.

<sup>1</sup> Industrial and Commercial History of England, pages 320-327.

Mr. Giffen's last contention — that governments can not keep the two metals at an agreed ratio — is part and parcel of his contention that they never yet have done so. Indeed, he would not have urged that France did not have bimetallism, had he not believed *a priori* that she could not have had it. He maintains that the industrial value of gold fixes its currency value. This is so far from being true that its exact opposite might be maintained with greater force.<sup>1</sup> Neither proposition, however, is entirely true. The demand for gold for industrial purposes is not entirely dependent upon its currency value, and the demand for it as currency is not at all dependent upon its industrial value. The currency demand is simply the more important of the two. Most men care for gold entirely because of its currency value. Demonetize it, and the greater and less resistible part of the demand is gone. The past accumulations of gold currency become bullion, pressing upon the bullion market and yielding no interest to their possessors until sold. It would take twenty-five years for the present industrial demand for gold (\$100,000,000 a year) to absorb the existing coin supply, even if the gold-mining industry were abandoned. By the time one-third of the gold coin had been thrown upon the bullion market, its value would probably be as low as the present value of silver bullion, to say nothing of the value that silver bullion would have when every dollar of this gold that has been taken from circulation has created an irresistible demand for the same amount of silver. The bimetallic law, which demonetizes one metal the moment it is held above the legal ratio, and makes currency exclusively of the other metal, does not need to be universal in order to

<sup>1</sup> The British Gold and Silver Commission unanimously speak as follows of the effect of the bimetallism of the Latin Union upon the price of silver used for non-monetary purposes: "The fact that the owner of silver could in the last resort take it to those mints (the mints of the Latin Union) and have it converted into coin which would purchase commodities at the ratio of 15½ of silver to 1 of gold, would in our opinion be likely to affect the price of silver in the market generally, whoever the purchaser and for whatever country it was destined. It would enable the seller to stand out for a price approximating to the legal ratio and would tend to keep the market steady at about that point." I confess my indebtedness to Mr. Giffen for the citation.

hold the two metals together for a long series of years.<sup>1</sup> By means of it, France was able to hold its gold and silver coin at par during years when the production of silver was three times as great as the production of gold, and also during years when the production of gold had suddenly become three times as great as the production of silver. It is not only the logic of history but the logic of supply and demand, that a nation as great as France could to-day hold together the two coins, when the ratio of their production is far away from either of the old extremes.<sup>2</sup>

<sup>1</sup> This argument, it will be noticed, is in no way based upon the power of governments to keep even costless government notes and bank notes at par with gold, so long as these notes are not issued in such volume as to drive all gold out of circulation. Yet governments do possess this power, as Mr. Giffen would not deny.

<sup>2</sup> The present ratio in the production of the two metals is about 3 to 2 (\$180,000,000 of silver to \$120,000,000 of gold). The non-monetary consumption of silver (including India's consumption) is estimated by Mr. Giffen at "about one-half of the annual production," leaving less than \$100,000,000 to be used as money. For some years after 1855 the coinage of France alone exceeded this amount (Laveleye, *La Monnaie et le Bimétallisme International*, p. 103), without any perceptible inflation of prices. When we take into account, therefore, the normal demand for subsidiary silver in Europe, and for standard silver in South America, it is doubtful if the available silver supply exceeds the normal monetary demands of the United States. The secretary of the treasury estimates that for the past decade we have added \$60,000,000 a year to our currency, and while Mr. Taussig is probably right in urging that the Treasury over-estimates the additions to our gold supply, yet as these have been years of falling prices, the supply has not been normal. It will not do, indeed, to affirm that the United States is a more powerful factor in the monetary situation than France because its population so greatly exceeds that of France. The French people use more money than the American people to transact the same amount of business, and their supply of money is to-day about the same as ours. Yet the fact that our population is increasing more than one million a year, while hers is stationary, enables America to absorb new currency without inflation to an extent that France could not. Whether or not, however, the United States can perpetually keep silver at a par with gold, is not the question. It is the duty of each generation so to regulate the currency supply that the same amount of money shall represent the same amount of property, securing substantial justice between debtor and creditor and preventing the injurious uncertainties in business enterprises attending hap-hazard contraction and inflation. There is little more *a priori* reason that bimetalism should prove a permanent solution of the currency problem than that gold monometallism should have proved such a solution. Had the production of gold continued to expand in proportion to the demand for it, there would to-day be no popular demand for bimetalism. A few years hence bimetalism may prove equally unsatisfactory. It is not within the power of any generation to solve the problems

Either in what he concedes or in what he contends, Mr. Giffen's discussion covers substantially the whole field of the controversy in America. The two most important points not mentioned in the volume before us are the monometallist contentions (1) that the expansion of credit currency has made up for the failure of the gold supply, and (2) that whatever the injury to debtors since the appreciation of gold began, most existing debts have been made during the last few years and should be paid in the same appreciated standard in which they were made. This last point is by all odds the most important, and contains a large element of truth and justice. It is not the duty of the government to attempt to right the wrongs of ancient history, but to render substantial justice among living men. Twenty years ago, when the question was before the public whether the greenback should be restored to par and all existing debts increased twenty per cent, the same plea was made in behalf of the debtors that is now made in behalf of the creditors. So far as social justice is concerned, the plea then was stronger than the plea now, inasmuch as the change proposed in favor of creditors was greater than the change now proposed in favor of debtors, and inasmuch as a larger part of the existing debt had been created under the existing standard; yet the nation decided that justice between the debtor class and the creditor class was not gauged by the dates of existing contracts, but that the creditor class, which would gain by the restoration of the rightful standard, was in large measure the same as that which had lost through its abandonment. If that was true then, it is much more clearly

of the future. It is its duty to right its own wrongs and leave the future free to right its wrongs. By the free coinage of silver the nation still keeps its hand upon the brakes. If the free coinage of silver — the conferring of interest-bearing and debt-paying power upon \$80,000,000 of silver bullion a year — fails to keep this money at par with gold, it is within the power of the national government at any time to limit or suspend this coinage, restoring the present parity. If, however, it trusts that banking paper, costing nothing, can be kept at par with gold, if all the bankers in the country are permitted to issue as much of it as their state legislatures will allow, we might have the currency inflated by a thousand millions one year, and this whole amount wiped out the next, if the people in a panic called upon the banks for the non-existent gold.

true to-day. The public debt of Christendom (upwards of twenty-five thousand million dollars) was nearly all the creation of a period before silver was demonetized, while the corporate and private indebtedness of the United States (nearly fifteen thousand millions<sup>1</sup>) is still in a considerable measure the legacy of a time when the legal-tender dollar was depreciated twenty per cent below the silver dollar. The instinctive feeling that justice between debtor and creditor classes demands that the money in which debts are paid shall be as nearly as possible of the same value as that in which they were made, would carry us much further than the free coinage of silver. That measure does not propose to restore to the standard its ancient value, but simply the value it would have if legislation had not interfered to demonetize silver and give to gold its constantly appreciating value.

The other point raised by American monometallists which is not covered by Mr. Giffen in the volume before us, is the contention that the employment of credit instruments has offset the failure of the gold supply. Inasmuch as a few writers who are usually careful have made much of this point, it is worth while to repeat what Mr. Giffen said about it in his paper on "Trade Depression and Low Prices," in the *Contemporary Review* for June, 1885. A single sentence will suffice:

It is suggested that the increase of banking facilities and similar economies in the use of gold may have compensated this scarcity. But the answer clearly is that in the period between 1853 and 1863 down to 1873, the increase of banking facilities was as great relatively to the arrangement existing just before as anything that has taken place since.

No one who seriously considers the money basis necessary for bank notes, the immense expansion of the field in which exclusively money payments are made (through the displacement of house work by factory work, and the disappearance of truck payments of every sort), and above all, no one who con-

<sup>1</sup> This is the estimate of Mr. George K. Holmes, the head of the mortgage department of the Census Bureau, and by all odds the most competent scientific authority upon this question.



siders that since 1873 the three great nations of France, Italy and the United States have returned from paper money to coin, can wonder that Mr. Giffen, who is a statistician, should have conceded this point without a struggle.

In conclusion a word should be said as to Mr. Giffen's chapter upon the American situation. He entitles it "The American Silver Bubble," and sets out by referring to Bagehot's remark that the United States is a country for exemplifying on a large scale the old truths of political economy. It is true that the United States has made some blunders on a large scale, where it has permitted powerful and interested classes to do its thinking for it; but it has yet to make a great blunder where it has been forced by its own experience to reject the teachings of such classes. Upon the silver question it has thus far chiefly exemplified upon a large scale the fallacies of monometallist political economists. Their predictions that the Bland dollar would presently fall to its bullion value have come to naught, and Mr. Giffen hesitates to predict that the Sherman dollars will fall below par. "So long," he says, "as the quantity of notes issued is strictly limited, and the government receives them freely for taxes and dues and pays them out only in exchange for the equivalent of gold, they will remain on a level with gold." This is clearly thought out. Bland dollars remained at par, though not redeemable in gold and never redeemed in gold, and notes issued under the Sherman act need a gold reserve back of them just as little.<sup>1</sup> Nothing can be more absurd than the cry that there will be "repudiation" and "depreciation" if this last issue of notes is redeemed in silver. Already four hundred million dollars redeemable exclusively in silver are circulating without depreciation, and if the anti-silver leaders really believe that this nation cannot maintain at par fifty millions a year of standard silver currency, they ought to rejoice in the opportunity to test the point and check the free-coinage agitation.

<sup>1</sup> Through the courtesy of Senator Sherman the writer has obtained from the Treasury Department verification of the statement that certificates issued under the Bland-Allison Act have never been redeemed in gold by the Treasury.

The absurdity of the Sherman Act lies in the construction placed upon it by the administration. The notes issued under it were intended to be redeemed in the silver against which they were issued. The proposition to issue bonds to purchase gold with which to redeem them, is a declaration that those who passed this act voted to spend fifty millions a year for paper on which to print promises to pay gold. The repeal of the Sherman Act that is demanded by bimetallicists of all parties and all shades, is a repeal by which the silver currency issued shall be standard dollars, and not ridiculously costly greenbacks straining still further the demand for gold.

Apart from the sentence above quoted Mr. Giffen's discussion of the "bubble" we began blowing fifteen years ago is much less lucid than that of the anti-silver bankers of the United States. He contends that the Sherman Act increasing our silver purchases twenty millions a year did more for the gold price of silver than free coinage could have done, and that it did nothing for the "inflationists" because "prices will not rise and money will not be abundant . . . so long as the gold standard remains." As to the price of silver, every monometallist agrees with every bimetallicist that free coinage might have added fifty millions a year to the demand and would have added indefinitely more if gold had begun to go out of circulation. As to "inflation," Mr. Giffen's dictum is rejected with equal unanimity. As recently as in 1890 general prices rose along with the increased supply of currency, and Mr. Giffen, in contending that an increased currency does not involve higher prices, has arrayed against himself not only the instincts and experience of every creditor and every debtor in the world, but also the teachings alike of political economy and statistical science. The classical economists lay down with mathematical precision the doctrine that doubling the currency means the doubling of prices, even if the currency be gold itself, while the immense rise in gold prices at the times of the great paper issues statistically illustrate how much of truth there is in this generalization. Not only in the United States, but everywhere in the world, creditors have instinctively contended

for the contraction of the currency and debtors have instinctively contended for its inflation ; and each class has simply recognized its own obvious interests. Mr. Giffen makes a characteristic mistake when he complacently says that on this head "there is a complete deception on the part of the people of the United States," and he makes it a little amusing when he speaks of the want of "common sense" among us. The people of the United States have all the world on their side when they believe that more currency means higher prices, and less currency means lower prices ; and they do not need to have anybody on their side to convince them that the present trouble is prices too low and not prices too high. No political party would have dared to go before the American people on a platform demanding less silver currency, and no public officer claiming to represent the people can vote to lessen this currency. What is immediately needed is an act giving us a silver currency which is not a promise to pay gold ; and what is then needed is a vigorous campaign of education to bring before people in the East the facts which have already converted the people of the West and the South. For this campaign, Mr. Giffen, by his absolute honesty as a statistician, has rendered an invaluable service.

CHARLES B. SPAHR.

## THE THEORY OF THE INHERITANCE TAX.

THE inheritance tax occupies a unique position in the science of finance. It is to be considered not only as a fiscal imposition, but also as a modification of the law of inheritance and bequest. The theory of the subject is therefore complex and many-sided. Inheritance and bequest may be restricted in two directions — according to relationship and according to amount ; the circle of relatives between whom inheritance operates may be narrowed, or a limitation may be put upon the amount which one person may receive from the estate of another. Corresponding to these two methods of limitation there are two arguments for the inheritance tax, (1) that which looks to the limitation of collateral inheritance or the extension of escheat, and (2) that which concerns itself with the effect on the diffusion of wealth. Regarding the tax as a fiscal imposition, it may be considered either as a fee or as a tax — as a payment in return for benefits received, or as a public contribution according to the ability of the tax payer. Each of these two conceptions, again, may be supported by either of three different arguments. The payment may be regarded as (3) a return for government services in general, or (4) for special services connected with the system of inheritance and bequest, according to the value of the service to the individual, or (5) as a means of defraying the cost of probate courts ; and accordingly we have what may be called the partnership, the value of service and the cost of service arguments. Leaving the matter of individual benefit out of consideration altogether, the inheritance tax may be explained as (6) a payment of back taxes evaded during life, (7) a property tax paid in a lump sum once in a lifetime, or (8) a tax on a particular form of accidental income. Let us briefly consider these eight theories in order.

1. The abolition of intestate inheritance as to all but the nearest relatives has been advocated by writers of the most

diverse economic views. Bentham, Enfantin and Bluntschli may be cited as representative examples. The operation of intestate inheritance between distant relatives is justly attacked as irrational and useless. In modern times the family consciousness extends scarcely further than to cousins-german, and there is no good reason for extending rights of inheritance to the more remote degrees of relationship. But since it is difficult to fix a precise point at which they should cease altogether, it is perhaps more equitable to take away these rights from some relatives only in part, by an inheritance tax graduated according to relationship and rising to a high percentage in the case of distant relatives. Even Bentham, who refused the name of taxation to his system, practically proposed a tax graduated according to relationship: direct heirs were to be exempt; grandparents, uncles and aunts were to pay one-half; and from more distant relatives in case of intestacy the state was to take the whole.

This argument for the inheritance tax applies primarily to cases of intestacy; yet such a limitation of intestate inheritance might well be accompanied by a corresponding limitation of bequest, and necessarily would be if the purpose of the measure were at all fiscal.

2. As the devolution of property may be restricted in one direction by an inheritance tax graduated according to relationship, so it may be limited as to amount by a progressive inheritance tax. It has sometimes been proposed to set an absolute limit to the amount which any person may acquire by inheritance or bequest, in order to prevent the perpetuation of immense fortunes. Such a measure was proposed by John Stuart Mill, and only a few years ago a bill to limit inheritances and bequests to \$500,000 in the case of direct heirs and \$100,000 in other cases was introduced in the Illinois legislature, on the recommendation of a special committee of the Illinois Bar Association. The limitation of inheritance in some such way as this has been so frequently proposed of late that it must be regarded as at least a possibility of the future. If it is to be realized, it would better be by means of a progressive inheritance tax; for it would be less arbitrary to adopt such a

graduated scale than to fix a point up to which inheritance and bequest might operate without limitation, and at which they should abruptly cease. If the amount which may be acquired by one person from the estate of another is to be limited absolutely, the tax must rise to one hundred per cent of the excess over a certain amount; but this is not necessary in order that the tax may operate to some extent as a limitation of inheritance. Any progressive inheritance tax will diminish large inheritances by a greater proportion than small ones, and if the progression is made to depend upon the size of the separate shares rather than that of the whole estate, it will tend to diffuse wealth in another way also, by encouraging the division of estates. It is plain that in order to act as a limitation on the amount of inheritances the tax must be progressive, or at least small amounts must be exempt, for otherwise large amounts would be diminished by no greater a percentage than small ones. Where the matter of the limitation of inheritance is involved, the question of progression in the inheritance tax is quite distinct from the question of progressive taxation in general; and this is doubtless one reason why many writers have considered inheritances a peculiarly fit subject for progressive taxation. John Stuart Mill, for example, wrote on this point as follows:

I conceive that inheritances and legacies exceeding a certain amount are highly proper subjects for taxation: and that the revenue from them should be as great as it can be made without giving rise to evasions, by donation *inter vivos* or concealment of property, such as it would be impossible adequately to check. The principle of graduation (as it is called), that is, of levying a larger percentage on a larger sum, though its application to general taxation would be in my opinion objectionable, seems to me both just and expedient as applied to legacy and inheritance duties.

The basis upon which this opinion rests is not altogether clear. The reasons here given are really reasons for high rates rather than for progressive rates. But a few sentences before the passage just quoted, Mill let fall a remark which shows that the limitation of inheritance as to amount, which he expressly advocated in another place, was in his mind also in this con-

nection. "It is not the fortunes which are earned," he said, "but those which are unearned, that it is for the public good to put under limitation." Moreover, he referred in the same paragraph to his proposal to limit inheritances absolutely.

Whether inheritance should be limited as to amount is a fairly debatable question, on both sides of which there is much room for argument. If property is to be regarded as belonging to the family as a whole rather than to the individual members, unlimited inheritance within the family follows as a necessary consequence. But the right of inheritance within the family is already greatly restricted by an unlimited freedom of bequest; a system of law which recognizes no *Pflichttheilsrecht* or *portion légitime* cannot be said to rest upon the family idea of property. Our whole system of inheritance seems to be contrived not so much to secure any rights to the surviving family, as to carry out the supposed wishes of the deceased. Sir Henry Maine has shown that bequest was first introduced into the Roman law not as a limitation upon inheritance, but as a means of protecting the rights of the real family against the artificial distinctions of the Roman family law, and to provide heirs where there were no immediate relatives. The original reason for the power of bequest, then, has disappeared; but the common law recognizes it to such an unlimited extent that it has come to be considered by many as almost a natural right. Surrogate Ransom, of New York, writes of "the absolute right both in morals and in law of a man to dispose of all his property" by will; and adds: "His right to so dispose of his property is as certain and sacred as his right to dispose of it by sale or gift during his life." As a statement of the common law rule, this is true enough, and it is doubtless a useful principle in deciding contested will cases; but it is by no means so clear that it will withstand criticism as an ethical principle. Nor is it now absolutely true as a statement of law, even in America. A recent Wisconsin statute,<sup>1</sup> for example, limits the freedom of bequest in a very marked degree by prescribing that no person leaving a widow, child or parent shall bequeath more than half his

<sup>1</sup> Laws of 1891, chap. 359.

estate to any benevolent, charitable, literary, scientific, religious or missionary society. From this it would be only another step to make the prohibition apply to bequests to individuals as well, preventing the disinheritance of children altogether.

Of the two institutions, inheritance and bequest, inheritance is the older historically, and seems to have the better reason for its existence. Its basis is found in the fundamental facts of family life, and in the duty of support which the father owes his children. It does not follow, however, that even the right of inheritance within the family should be unlimited. The duties of a father to his children include support during childhood and a suitable education and start in life; but no rule of morals requires the father to leave his children wealthy if he happens to be wealthy himself. It may be better for them in every way to be left with only a moderate amount of property. The inheritance of a large fortune may prove an encouragement to idleness rather than an incentive to industry, and may result in injury both to the heir and to society. It may have been some such thoughts as these which led to Montesquieu's remark: "La loi naturelle ordonne aux pères de nourrir leurs enfants, mais il n'oblige pas de les faire héritiers."

The diffusion-of-wealth argument shows a nearer approach to socialistic tendencies than any other argument for the inheritance tax. It is the argument of the Nationalists, but it is also the argument of Mr. Andrew Carnegie when he favors a progressive inheritance tax rising as high as fifty per cent. In *The New Nation* Mr. Edward Bellamy carries this argument so far that he is not willing to permit any graduation except according to amount; he denounces the graduation according to relationship as absurd and vicious, and expresses the belief "that the drastic application of the inheritance tax is eventually to be one of the most efficacious instruments in preparing the way for economic equality." But such utterances on the part of socialists must not be allowed to create the impression that the limitation of inheritance by a progressive inheritance tax is essentially a socialistic measure. Inheritance and bequest are not only not natural rights, but they are not even neces-



sary consequences of the right of private property. The right to enjoy property during life does not necessarily imply the right to direct its disposition after death, or the right to have it passed on to one's kindred by the operation of the intestate law. Any idea that the limitation of inheritance is socialistic, or destructive of the right of private property, should be banished from the mind, and the question how far rights of inheritance and bequest should extend, and how far they should be limited by inheritance taxes or otherwise, should be decided solely by considerations of social necessity and expediency.

3. Under the benefits theory of taxation the inheritance tax has been explained as a payment in return for the various services rendered by the state. Eschenbach pictures the state as a silent partner in the business of each citizen, without whose aid and protection it would be impossible to transact business or to accumulate wealth; when the partnership is dissolved by death, the silent partner, the state, is entitled to a share of the capital. Stated in this form, the argument seems rather fanciful; but in its essence it is simply a statement of the intimate relations which exist between the individual and the state, and of the manifold useful offices performed by government, which may be conceived to give the state a better claim to the property of a decedent than can be advanced by any individual who was of no assistance to the owner in acquiring it. This argument will not justify graduation according to relationship. It will result in progressive, proportional or regressive rates, according to the view which may be taken of the relative importance of governmental action to the rich and to the poor. The argument is in reality not so much a justification of any particular kind of tax as of taxation in general.

4. The inheritance tax is sometimes considered as a payment, not for the benefits of government in general, but for a particular service connected with the institution of inheritance or bequest. It is argued that since these privileges are conferred by positive law, those who benefit by them owe something to the state in return for the legal regulations which give them the right to the property of another after his

death, for the proceedings necessary to put them in possession, and for the protection of the property in the meantime, when it would be especially liable to unlawful depredation. Leroy-Beaulieu compares the tax to an insurance premium, but the analogy is not perfect, for it is not the function of government to make good losses, but to prevent them.

This theory will justify graduation according to relationship, since there is some degree of probability that property might be transmitted in the direct line in a given case even if there were no laws of inheritance; the state may therefore be said to render a greater service when property goes to distant relatives, or strangers in blood, than when it is simply handed down from father to son. Other things being equal, the value of the service to the individual is in proportion to the value of the property received; but the absolute amount which ought to be paid in accordance with this theory would be difficult to determine. In the case of a distant relative it would be nearly the whole amount of the inheritance, because there is very little probability that a distant relative would obtain the property without the aid of the state.

5. The cost-of-service theory considers the expense of the governmental action rather than its value to the individual. It is no more than fair that the cost of probate courts should be defrayed, in large part at least, by those who receive the chief benefits from them. This argument has been neglected by writers on the subject, but its influence may be plainly seen in the legislation of several American commonwealths, notably New Hampshire, Minnesota, Wisconsin and Illinois, where light inheritance taxes have been imposed for the express purpose of defraying the expenses of probate courts. A tax levied according to cost of service should be regressive, or perhaps even the same for estates of all values; it should be moderate in amount, and should not discriminate between different degrees of relationship. As a matter of fact, the taxes in the commonwealths mentioned above have never been more than one per cent, and in most cases considerably less; and in Wisconsin the rates were slightly regressive.

6. Leaving the services of government out of consideration, the inheritance tax may be regarded as a payment of the taxes evaded by property-owners during their lives. Graduation according to relationship cannot be justified from this point of view, because the tax is regarded as being paid by the decedent and not by the heir. Progression is a logical outcome of this theory, for since large fortunes escape their just share of taxation more easily than small ones, a progressive inheritance tax will operate to produce a rough sort of justice between rich and poor. Considered solely with reference to justice between individuals, the back-taxes theory is not very satisfactory, because the inheritance tax bears no necessary relation to the amount of taxes evaded in individual cases, unless there is a tax which is so universally and uniformly evaded as to be practically a dead letter. In such a case the back-taxes theory shades into the one which follows.

7. The tax may better be regarded as in lieu not of taxes which have been evaded, but of taxes which were not imposed; that is, as a property tax, or as Bastable suggests, a capitalized income tax, paid once in a generation instead of once a year. It is paid after the death of the tax-payer, and hence at the time most convenient for him; or it may be regarded as being paid by the heir in advance. The burden of annual taxes may be expected to be lightened when an inheritance tax is introduced, and hence the latter is not an additional burden, but only a method of levying part of the property or income tax. This appears clearly when the inheritance tax is not made applicable to all property, but only to those particular forms of property which it is not practicable to tax in any other way — which can be found and assessed only when passing through the probate court. According to this theory the tax must not be graduated according to relationship, because it simply takes the place of another tax which is not so graduated. Whether the rates should be proportional or progressive will depend upon the general tax policy of the government.

A consideration which has been strongly urged in favor of the inheritance tax in Germany is that, when levied in con-

junction with the income tax, its effect will be to increase the burden on income from property as compared with income from labor. This is a characteristic of the property tax also; indeed, from this point of view the inheritance tax is regarded as a variety of the property tax.

8. The accidental-income argument rests upon the fortuitous nature of acquisitions by inheritance and bequest. They are sudden and perhaps unexpected accretions of property without labor on the part of the heir, and manifestly increase his ability to pay taxes. Theoretically, his annual property tax will be increased by the possession of this added wealth, but in the case of personal property this cannot be depended upon. It is conceivable that where there is an income tax, inheritances might be taxed as income; but on account of their accidental or gratuitous nature it seems more just to subject them to a distinct tax greater in amount than the income tax, or in addition to the property tax. It is not true in every case, however, that the inheritance of property indicates a real increase of tax-paying ability. As Adam Smith clearly pointed out, the death of the head of a family may be a positive economic loss to the wife and children who lived in the same house with him, enjoyed the use of his property during his life and were dependent upon his personal exertions for their support. But if his income was from property instead of labor, his death will make little difference in the family income. If the income was wholly from interest, the economic condition of the family will be somewhat improved, for the income will remain the same, and the necessary expenditure will be diminished by the death of one member. The extraordinary expenditure incident to the burial will probably be more than covered by the life insurance. If the income was from profits, the family income may be either increased or diminished, according to the changes in the employment of the capital which may be made as a result of the owner's death. But in any case where property goes to collateral relatives, or even to self-supporting adult children, there is a distinct increase of tax-paying ability; and the more distant the relationship, the

more truly may the acquisition be said to be accidental. This consideration logically results in graduation according to relationship, the widow and minor children either being exempt altogether or exempt on a moderate amount and lightly taxed on the remainder. Adult sons and daughters may well be taxed somewhat more heavily. Progression may be justified by the accidental-income argument, since according to the theory of value, the final utility of a given decrement or tax decreases as the amount of the inheritance increases. The principle of ability indicates that when the tax is regarded as being paid by the heirs and not by the decedent, the exemptions (and if the rates are progressive, the progression also) should be controlled by the size of the separate shares rather than by that of the whole estate. It is clear that the size of the estate as a whole makes little difference to the individual heirs except as it affects the size of their several portions. By the application of this principle in the case of direct inheritances, the effect of the size of the family upon faculty can be practically recognized, as it probably can be in no other form of taxation.

The amount of property acquired by inheritance and bequest cannot be said to be a perfect criterion of faculty, and hence the inheritance tax would not be defensible as the sole mode of taxation; but there is no one perfect criterion of faculty, and the inheritance tax is useful as one mode of getting at the ability of tax-payers. On the whole, the accidental-income theory is perhaps the most satisfactory explanation of inheritance taxes as they actually exist.

It remains to consider what is commonly known as the theory of state co-heirship. Bluntschli, in proposing heavy inheritance taxes graduated according to relationship, and the abolition of inheritance and bequest between persons not descended from the same great-grandparents, conceived the state and local political units as co-heirs with individuals. The expression has been adopted by many German writers, and by Professor Ely in America. Some of the Germans are so fond of the term that they apply the name *staatliches Miterbrecht* to

any theory of the limitation of inheritance. Thus Krüger cites Bentham as the chief representative of the theory of state co-heirship, although Bentham himself made no use of that expression. His plan was to abolish intestate inheritance except between immediate relatives, to restrict the power of bequest of testators having no direct heirs, and to give the state a part of the property of decedents in certain cases. He called the system which he proposed an extension of escheat, and based it not upon any right of inheritance in the state, but upon the absence of any reason for the operation of intestate inheritance between individuals not closely related. It is therefore a mistake to call Bentham a representative of the theory of state co-heirship. But later writers have combined with his argument the thought which lies at the basis of the partnership argument, and have urged that the state should inherit property from individuals because of what it does for them during their lives. The state is sometimes represented as a larger family; according to Umpfenbach, the bond of kinship between distant relatives loses itself in the whole nation, which therefore inherits the property of individuals as the family inherits the property of its members. Such expressions as these, however, must be regarded as metaphorical rather than scientific. The state may acquire property by escheat, but not by inheritance. Inheritance implies kinship, and the modern state is not a genetic association. The representation of the state as co-heir is either a mere figure of speech (and as such it is as old as Pliny) or else it results from a confusion of inheritance and escheat. Inheritance is not a matter of public law; it is for private law to prescribe how far inheritance shall be permitted between individuals, and for public law to ordain that where inheritance ends escheat shall begin.

The courts have frequently attempted to define the nature of inheritance taxes, but their deliverances on the subject do not agree. The United States Supreme Court decided that a tax which Louisiana formerly levied on foreign heirs was an exercise of the state's power of regulating inheritance and bequest. As a matter of fact, the law appeared on the statute-

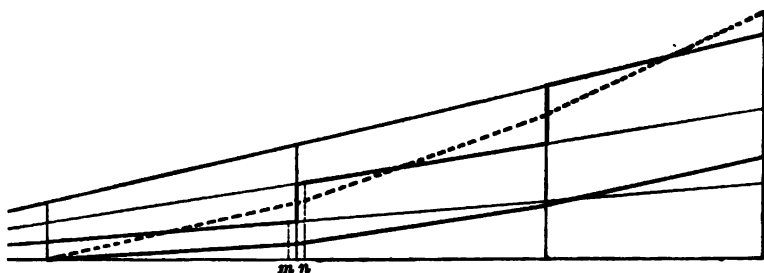
book under the title "Successions," as well as under "Revenue." The inheritance taxes levied by the general government during the Civil War manifestly could not be explained as a regulation of inheritance; they were sustained as an exercise of the taxing power. The inheritance tax is sometimes regarded as a tax on the property itself, but the better and more prevalent view is that the subject of the tax is the devolution of the property, or the privilege of acquiring property by inheritance or bequest. Inheritance tax laws have been declared unconstitutional for particular reasons in Minnesota and Wisconsin, and in New Hampshire this mode of taxation was declared to be unequal and unjust. New Hampshire is the only state in which it has been held to be unconstitutional for reasons which apply to inheritance taxes in general; and it has often been declared not to conflict with the requirements of equality and uniformity.

At the present time the most important practical problem connected with the inheritance tax is the question of progression. The introduction of progressive rates has been considered within a few months by the legislatures of at least four or five commonwealths, and there is good reason to think that the progressive principle may soon be introduced in America. The experience of other countries shows that progressive inheritance taxes are eminently practicable; they are also quite defensible in theory. The arguments for progressive taxation in general apply with full force, sometimes with added force, to the inheritance tax.<sup>1</sup> Considered in its relation to the theory of value, the question of progression in the inheritance tax is simply a part of the question of progressive taxation in general. The same may be said of progression regarded as a compensation for the inequalities of fortune produced by governmental action. The special compensatory theory, which regards progression in particular taxes as counterbalancing regression in other taxes, applies with special force to the inheritance tax considered as a composition for evaded taxes. Progression is a

<sup>1</sup> For a statement of the various arguments, see Seligman, "The Theory of Progressive Taxation," *POLITICAL SCIENCE QUARTERLY*, VIII, 220 (June, 1893).

necessary element in the diffusion-of-wealth and back-taxes theories of the inheritance tax, and viewed from the standpoint of the other theories the principles are much the same as in the consideration of taxation in general; and since progression in general has a sound basis in theory and the inheritance tax has been found to be a practicable medium for the introduction of the principle, there is every reason to welcome the development in this direction.

Equity requires that the exempt amount should be deducted from the value of inheritances which are taxed, and the tax levied only on the excess; and that where the rates are progressive, the higher rates should not apply to the whole amount, but only to the excess over the next lower class in each case. Otherwise the tax will result in great inequalities, its effect in some cases being to make a larger inheritance actually less than a smaller one. It is contrary to all justice to



exempt an inheritance of \$9,950, for example, and to levy a tax of \$100 on one fifty dollars larger, as is done in New York; or to take a tax of one per cent, or \$99.50, in the first case, and one of two per cent on the whole amount, or \$200, in the second case. The inequality of such a tax may be made to appear very clearly by a graphical representation. In the accompanying diagram any given distance on the horizontal line, measured from the point at which the oblique lines meet it, represents the amount of an inheritance, and the perpendiculars erected at various points on that line represent the amount of the tax on an inheritance of the given amount. The oblique lines show the general effect of taxes levied at different



rates. The irregular heavy line represents a progressive tax in which each rate applies to the whole amount, while the lower heavy line represents a tax levied at the same percentages, but in which each rate applies only to the excess over the next lower class, and in which the exempt amount is deducted in every case. When *mn* is less than the difference between the two perpendiculars, the difference between the two taxes is absolutely greater than the difference between the two inheritances. The temptation to under-valuation in such a case will be irresistible. The only disadvantage of the mode of progression represented by the lower line, as compared with the other, is that, the rates remaining the same, the revenue will be less; but the same revenue can be obtained by simply increasing the rates, as indicated by the dotted line. This same reasoning applies to all progressive taxes, and to all taxes from which small amounts are exempt; but it applies with special force to the inheritance tax, because, the exemption being usually greater and the rates being often higher, the difference between the two kinds of progression is greater, and the inequality of the first kind is more marked. Hence it is not surprising that non-deduction of the exempt amount, which in the property tax is passed over in silence, should call forth protests when applied to the inheritance tax. Some of the strongest arguments which were advanced against particular inheritance tax laws in the discussions of last winter and spring were in reality arguments only against this very defect. This was the case in the *Boston Herald's* attack upon the Massachusetts law, and in the opposition of the Minneapolis Board of Trade to a proposed law in Minnesota. In Pennsylvania the proposal to introduce progressive rates, though it was vehemently denounced as socialistic, still excited scarcely more opposition than the proposal to exempt estates of less than \$50,000 without deducting that amount from the larger estates. The question is therefore one of great practical importance, although its theoretical solution is very simple.

Interstate complications have given rise to some perplexing questions in connection with the inheritance tax as well as

with other forms of taxation. In theory, the inheritance tax leaves room for more such difficulties than any other tax, because the domicile or citizenship of both decedent and heir, and even of the executors and administrators, may be taken into consideration, as well as the location of the property; but the American practice is to consider only the domicile of the decedent and the situation of the property, so the problem is much the same as in the case of the property tax. Where real estate is concerned, the courts have ruled that the tax may be levied only where the property is situated; but personal property may be taxed either where it is situated or at the decedent's domicile. A few commonwealths levy the tax both on all property within the state and on the personal property of resident decedents, wherever situated; but the majority avoid double taxation by taxing only property within the state, of whatever kind. This seems to be the best solution of the problem which can be reached without interstate agreement.

In some countries the inheritance tax is accompanied by a tax on gifts *inter vivos*, partly for the purpose of preventing evasion; but in America it has been found sufficient for this purpose to make the inheritance tax applicable to gifts made to take effect at death. Some European countries also levy special taxes on the property of corporations, in lieu of the inheritance taxes paid by individuals. It may perhaps be considered that the immortality conferred upon corporations is analogous to the privilege of inheritance, and justifies a similar tax; but such taxes probably result rather from regarding the inheritance tax as a tax on property, which should therefore be paid on all property, whether it changes hands or not. But justice does not require a special tax on corporations in lieu of the inheritance tax, because the stock and bonds of business corporations become subject to the inheritance tax on the death of their owners, while most other corporations, such as benevolent, scientific and religious societies, are often as a matter of public policy exempted even from the inheritance tax on property bequeathed to them.

It has frequently been proposed to set aside the proceeds of the inheritance tax for benevolent or educational purposes. Such proposals probably result from regarding the tax as a social rather than a purely fiscal measure. Bluntschli's suggestions have influenced the legislation of several Swiss cantons in this regard, and similar provisions have sometimes been made in the laws of other countries. It is interesting to note that the *vicesima hereditarium*, the earliest inheritance tax of which we have any definite knowledge, was established by Augustus for the purpose of pensioning the veterans of the Roman army; while some of the most recently established inheritance taxes, in Ontario, Nova Scotia and California, are for charitable and educational purposes. The progressive direct inheritance tax recently proposed in Pennsylvania was originally intended to create a state charity fund.

The classical objection to the inheritance tax, urged by Adam Smith and Ricardo, is that it is a tax on capital. This objection has also been applied to the property tax; but the inheritance tax is perhaps more likely to be paid out of capital than an annual property tax. It has been pointed out, however, by Mill, and more recently by Leroy-Beaulieu, that whether a tax will be paid out of capital or out of income depends not so much upon the mode of taxation as upon the amount of the tax and the time allowed for payment. And even if the tax is paid out of capital in a given case, it does not follow that there will be any diminution of the national capital. Over against the objection that the tax will be paid out of capital there are two counter arguments: first, that being levied only when the tax payer has just received a mass of property, it is easily and conveniently paid; and second, that by diminishing large fortunes it tends to bring about a more equitable distribution of wealth. This second argument will of course apply only when the tax is progressive, or when small amounts are exempt.

Adam Smith also charged the inheritance tax with violating his canon of equality, "the frequency of transference not being always equal in property of equal value." It has been suggested that this cause of inequality will operate in the long run

between families, because of hereditary differences in longevity. This objection can be sustained only by regarding the inheritance tax as a property tax paid once in a lifetime. If the tax is considered as a limitation of inheritance, or as a fee, or as a tax resting upon the increased tax-paying ability of the heir, there is no inequality in exacting it as often as the devolution occurs. The tax may be paid at unequal intervals, but it is paid each time by a different person, and as a result of a new transfer. In the case of collateral inheritance it obviously makes little difference to the heir whether the property has changed owners within a few months or remained in the same hands for half a century. Where the property remains in the same family and may be regarded as belonging to the family in common, it is true that a frequently recurring inheritance tax might prove oppressive; yet this is an argument rather for the exemption or light taxation of direct heirs than for any discrimination according to the intervals at which the devolutions occur. However, it is sometimes attempted to avoid the supposed inequality by exempting the second devolution of the same property within a given period. The Chilean law makes the period ten years; in Italy it is only four months. As another way out of the difficulty, Leroy-Beaulieu commends the English method of reckoning the succession duty according to the successor's expectation of life; but this results in a heavier taxation of minors than of adults, which in the case of direct heirs, at least, is contrary to the principle of faculty. It is better to consider the time since the last devolution rather than the probable interval before the next one.

The objection of double taxation, which is sometimes urged against the inheritance tax, also rests upon the assumption that it is of the same nature as the property tax. Even granting the premise, the objection is little more than a play upon words. Double taxation, in the proper sense of the term, implies inequality of taxation; and it is not unequal or double taxation to tax property both at regular intervals and also whenever its owner dies, unless one or the other of these forms of taxation is unequal of itself.

When the provisions of existing inheritance tax laws are

considered, the absurdity of the cry that this is "a tax on widows and orphans" is easily perceived. In America, at least, whenever the tax applies to widows and orphans at all, the possibility of oppression is precluded by light rates and generous exemptions.

It is sometimes objected that the inheritance tax will drive away capital and discourage industry and thrift. These objections really apply less to the inheritance tax than to almost any other form of taxation. The deterrent effect of a tax to be paid only after death is not to be compared with that of a tax which must be paid every year. The inheritance tax is a less discouragement to industry than an income tax ; it is a less discouragement to thrift than a property tax ; and no tax which can be levied upon movable wealth will have less effect in driving away capital.

The inheritance tax has been denounced as confiscation, extortion and a dangerous step toward communism. This is declamation rather than argument, and it is a sufficient answer to point to the numerous theories by which the tax may be explained from the standpoint of pure finance. The inheritance tax is no more confiscation or extortion than any other tax ; if it appears so, it is because it is unfamiliar, just as the introduction of a property tax where it is a novelty has sometimes been thought to be a step toward confiscation.

There is no valid objection to the inheritance tax as a part of the fiscal system. In practice it has been found to work well, being difficult to evade and yielding large amounts of revenue without injurious results. The experience of New York and other states shows that the inheritance tax and a system of corporation taxes could in most cases be made to pay all commonwealth expenses, leaving all taxes on property to the local political divisions.

The inheritance tax is found in nearly all the highly civilized countries of the world, but the laws vary greatly in their provisions.<sup>1</sup> Progressive rates are found only in the United

<sup>1</sup> For a description of these in some detail see my monograph, *The Inheritance Tax*. Columbia College Studies in History, Economics and Public Law, vol. iv, no. 2.

Kingdom, Australasia, a few cantons of Switzerland and two provinces of Canada. In all these places the rates are also high, and the tax forms an important source of revenue. These facts seem to indicate that democratic countries are the principal home of highly developed inheritance taxes, though the United States has thus far been an exception to the rule. Here this form of taxation dates from 1826, when it was first introduced in Pennsylvania. It is now found in Maine, Massachusetts, Connecticut, New York, Pennsylvania, New Jersey, Delaware, Maryland, West Virginia, Tennessee, Ohio, Michigan and California. The rate for collateral relatives is in most cases five per cent, but in Maine, Maryland and West Virginia it is only two and one-half per cent, in Ohio three and one-half per cent, and in Delaware the tax now applies only to strangers in blood. New York and Michigan are the only commonwealths in which the tax applies to direct heirs ; there they are taxed only on personal property, and the rate is only one per cent. There are approximately proportional probate fees in Cook County, Illinois, and in Vermont, amounting respectively to about one mill and two-fifths of a mill on the dollar, and Virginia has a similar fee which is called a tax. The inheritance tax has been rapidly increasing in importance in the past few years, and it is a significant fact that of the thirteen commonwealths in which it now exists four adopted it at the legislative sessions of 1893. Within the past twelve months, also, bills to introduce or extend the inheritance tax have failed of passage in Vermont, Nebraska, Wisconsin and Pennsylvania ; the Nebraska bill proposed a radically progressive tax, and the Pennsylvania bill called for a progressive tax on direct heirs. In Minnesota the last legislature proposed a constitutional amendment permitting such a tax, in order to make sure of its legality. It is evident that the popularity of the inheritance tax is on the increase, and it seems not improbable that before many years this mode of taxation may be well nigh universal in America.

MAX WEST.

## THE MODERN SPIRIT IN PENOLOGY.

### I.

THE most striking feature of our age is the ever-increasing consideration given to those elements which promote the progress of human civilization, and the well-being of society as well as that of every individual. It is due to this tendency that during the last ten or fifteen years a powerful movement has established itself for reforming and humanizing the old methods of dealing with crime.

In times when the psychological faculties and the self-consciousness of man were less developed than they are now, the barbarous treatment of prisoners was actually felt less by them than would now be the case ; and it is quite possible that the treatment of convicts to-day, comparatively lenient, humane and just as it is, is relatively more severe for them than was the case when the rack and other instruments of torture were in full swing. Increasing civilization has created innumerable means of comfort and enjoyment in order to make life as attractive as possible ; the mere restraint of a man's liberty, therefore, involving, as it does, compulsion, exclusion from society, denial of the customary enjoyments of life, and, in the case of individuals who still possess some moral consciousness, the feeling of repentance and shame, is and should be considered as a punishment of no little importance. Herbert Spencer says :

All beyond what absolute morality countenances is as unnecessary, inexpedient and unjustifiable, as it is useless. The necessities of civilization require no gratuitous infliction of pain, no revengeful penalties. Complete life being the end of morality, and the conditions it insists on being such as to render this complete life possible to all members of a community, we cannot rightly abrogate these conditions, even in the person of a criminal, further than is needful to prevent greater abrogation of them. . . . Freedom to

fulfil the laws of life being the thing insisted on, to the end that the sum of life may be the greatest possible, it follows that the life of the offender must be taken into account as an item in this sum, and that we must permit him to live as completely as consists with social safety. . . . It is commonly said that the criminal loses all his rights. This may be so according to law, but it is not so according to justice.

F. I. Monat, president of the Royal Statistical Society and formerly inspector-general of jails in Bengal, says :

Solitary confinement for various periods, deprivation of all sources of enjoyment, prolonged enforced silence and their gloomy accompaniments, aimless, dispiriting and exhausting tasks, have often produced their natural results in wrecking both mind and body. I doubt if they have exercised the smallest influence upon the habitually criminal classes in determent of crime. The reason of this appears to me to be simple and obvious. Pain is a sensation and has no immediate connection with a moral sentiment. Pain, again, is confined to the individual made to suffer it, and can scarcely be fully realized by other persons, even in the active manifestations. The mental and bodily torture of long continued solitary confinement, unrelieved by a ray of sunshine of humanity, is never seen by the outer world, and even if witnessed by others whom it is intended to deter, would have no active terrors, for it is a passive state. The painful scenes witnessed at public executions when the laws were savage in their severity and brutal in their exhibition, had no effect whatever in deterring from crime, and simply demoralized those who thronged to gloat over the sufferings of the victims of perverted justice. . . . In our Norfolk Island, the system of unrelenting severity in its most repulsive form succeeded in converting rational beings into unreasoning fiends, and failed so entirely to deter from the commission of the most appalling crimes, as to lead to its abandonment, as a scandal and reproach to humanity itself.

But there is another more immediate consideration to be taken into account : the formidable fact that in every civilized country, for a long number of years, crime has continually been on the increase, so that the criminal class is an ever-growing danger. France shows during the last half century an increase of crime of 133 per cent. A similar or even more



deplorable picture is shown by every other country of the old continent. In England judicial statisticians wish us to believe that crime has diminished. But this is not the case ; those who study and interpret criminal statistics without bias and who take fully into account all outward influences, do not share such an opinion. If a hundred men are sentenced at one period to ten years, and at another period, for exactly the same offences, to five years, a reduction of fifty per cent of the prison population is effected, but a diminution of crimes either in number or gravity can not necessarily be inferred. In fact, the diminished prison population in England is actually due to the infliction of shorter sentences in the application of the law. Again, the drafting off of youthful criminals to separate establishments through the recent acts of Parliament must also receive its due attention.

The general increase of crime leads the thoughtful mind to enquire whether or not the criminal code and its administration, the management of prisons and the treatment of the law-breaking classes fulfil the purpose for which they are designed. And this question seems to have become at last in every country a burning social problem. But, while Europe is still exhausting its intellectual power in unproductive theories, the experimental genius of the Americans shows us in the New York State Reformatory at Elmira the actual results of more than fifteen years of practical progress ; and the most advanced scientific investigators of Europe do not hesitate to acknowledge that "Elmira" is the practical end to which their theories lead.

As regards the criminal statistics of America it is more difficult than elsewhere to come to a definite conclusion. Up to 1880 criminality had alarmingly increased, but in 1890 it showed a decided fall. The number of prisoners to a million of population was as follows :

|                |       |
|----------------|-------|
| 1850 . . . . . | 290   |
| 1860 . . . . . | 607   |
| 1870 . . . . . | 853   |
| 1880 . . . . . | 1,169 |
| 1890 . . . . . | 1,133 |

This showing leaves ample room for speculation as to the extent to which the efficacious working of the rational reformatory system has influenced the results.

## II.

In order to cope with the problem of crime all authorities on the subject agree that we have to know : What is crime? Who and what is the criminal? Why and in what does he differ from the normal individual? Dr. Anderson, detective commissioner of the London police, takes from the lips of a criminal these words :

Yes, I am a criminal ; but at whose door lies the real guilt of my crimes? I am just what the state has made me. I was innocent and happy once and a career of usefulness was open to me ; but your infamous laws stepped in and dragged me back to the want and misery and vice from which kind friends rescued me. Those who are responsible for such laws ought now to be in the dock beside me !

Such are the words recorded by one whose position entitles him to be considered one of the greatest authorities on this question ; and although many a man may feel inclined to treat them lightly, they certainly contain ample food for reflection, just as well as when a convict in a moment of reasonableness asks : " What am I to do, sir ? I have never been taught anything but pocket-picking." Or when the superintendent of the educational department at the Elmira Reformatory, Professor James R. Monks, says to visitors : " Ask yourself where you would be, possibly, had you had no educational advantages ; you appreciate the value of your early training and now, if not before, you grasp the meaning of what you see before you. . . ."

It is beyond doubt that the criminal is partly if not entirely produced by our social conditions—that society is far more responsible for the commission of crime than is generally acknowledged. And if this fact alone is kept in mind, one will soon find that the old basis of penal justice must undergo a thorough transformation before it can properly serve its

purpose. But there are other considerations. Sir Edmund du Cane, director of English prisons, says :

An examination of the criminal population as a whole has led some skilled observers to express the opinion that in mental and bodily constitution prisoners are below the average of the population of which they form a part.

And elsewhere du Cane continues :

Crime may very well be compared with physical disease, and the mode of proceeding for repression of the one is in principle the same as for the other. The most effective mode is to remove its causes, which often have their origin in our social conditions, and more often in the absence or weakening of those moral restraints by means of which society is kept together. . . . Many of the criminals do not and possibly cannot comprehend their own position or realize their true self-interest as social and responsible beings, and their actions are but too frequently prompted by what appears to them the expediency of the moment.

Dr. Corre says :

There is something feline in the criminal ; like the cat, he is indolent and capricious, yet ardent in the pursuits of an aim ; the anti-social being knows only how to satisfy his impulsive instincts.

Dr. Wey, of the Elmira Reformatory, says :

It is a mistake to suppose that the criminal is naturally bright. Like the cunning of the fox, his smartness displays itself in furthering his schemes and in personal gratification and comfort. . . .

Dr. A. Krauss says :

Criminals are more astute than intelligent. But what is this astuteness? It is an instinct, an innate faculty, which does not depend on real intelligence and which is already found precociously perfected in children, in the lowest savages, in women and also in imbeciles. . . .

Rev. W. D. Morrison, chaplain at H. M. Wandsworth Prison, London, says in his admirable book, *Crime and its Causes* :

The criminals possess no power of sustained volition. . . . Often animated by good resolutions, often anxious to do what is right, often possessing a sense of moral responsibility, these unfortunate

creatures plunge again and again into vice and crime. In some cases of this description the will is practically annihilated ; in others it is under the dominion of momentary caprice ; in others, again, it has no power of concentration or it is the victim of sudden hurricanes of feeling which drive everything before them. They experience real sentiments of remorse, but neither remorse nor penitence enables them to grapple with their evil star. The will is stricken with disease and the man is dashed hither and thither, a helpless wreck on the sea of life. Egoism, selfishness, a lack of consideration for the rights and feelings of others, are the dominant principles in the life of both. . . . The bulk are of a humbly developed mental organization. Whether we call this low state of mental development atavism or degeneracy, is to a large extent a matter of words ; the fact of its widespread existence among criminals is the important point.

Professor Bain says :

We must suppose, what is probably true of the criminal class generally, a low retentiveness for good and evil, the analytic expression of imprudence, perhaps the most radically incurable of all natural defects.

These quotations from the most eminent authorities speak for themselves. It scarcely admits now of question that every truly criminal act proceeds from a person who is, temporarily or permanently, in a more or less abnormal condition, and Sir James Fitzjames Stephen is right when he says : "The whole tendency of the age is in the direction of regarding vice and crime rather as diseases, qualifying their unfortunate victim for a hospital, than as causes of just hatred and vindictive punishment."

Now, the law of England and, with scarcely any modification, that of every other country, declares distinctly that a criminal intention does not exist if it can be proved that the culprit at the time of perpetrating the deed was in a state of unconsciousness or mental derangement, so that he cannot justly be held responsible for his action. But the spirit of this clause is grossly ignored in the practice, for the simple reason that the conception of unconsciousness and mental derangement in a man — the state when he is deprived of his mental and

moral responsibility — is still obstinately imperfect. It is not only the insanity as defined by special clauses which has to be considered, but all those elements and influences which compel the recognition of a temporarily or permanently defective state of mental and moral consciousness in the individual. Abnormal development of the physical, intellectual and psychological faculties; moral insensibility and instinctive inclination for the low, ungovernable impulses and passions, whether inherited or produced through external circumstances; as well as youthfulness, homelessness, illiteracy and various other elements which prompt to crime; — are the data which must be taken into account in the modern science of penology.

It is an established fact and needs no proof that no one will commit any wrong or criminal act who is perfectly conscious of what he is doing, who is the master of himself and his impure impulses and inclinations and is able to realize the consequences which must infallibly follow, who knows that restrictions and laws are absolutely necessary for the maintenance of public order, security and peace, and that the highest amount of well-being can only be obtained by a just and honest and law-abiding life. Anyone who commits a wrong act either has no true conception of happiness, or is his own slave — the unfortunate victim of his degenerate state.

That there exist certain forces which do or may permanently or temporarily incapacitate an individual from acting with full consciousness, and from being guided by reason to choose always the right way, is found recognized in the remarks of one of the London judges, who, when sentencing a woman a short time ago, said :

You have become a person of so little moral sense that eventually you have become an instrument, and a willing instrument, in taking away the life of a woman whose only offence towards you was that she was married to a man upon whom you had set your unholy passion.

In spite of this recognition, which involves the most substantial, though perhaps involuntary, condemnation of the law, and especially of its interpretation and application in

practice, this miserable creature was sentenced to death and hanged.

Another illustration may be added: One Sunday morning in the practical ethics class in the Elmira Reformatory, when the subject of discourse was the turning away from the old path, one of the inmates suddenly rose, showing great agitation, and exclaimed: "It is impossible! My father is a thief; my mother is a thief; I am a thief, and can never be anything else." If such a man, conscious of being on the wrong path, is incapable from one cause or another of choosing the right; if in an hour of reasonableness a ray of sunlight penetrates the darkness and enables him to see himself in his perverted nature, and to recognize the criminal causes and motives within — those elements, which seem to render it absolutely impossible for him to be guided by his conscience and intellect; does not this fact powerfully appeal to every human soul for the most careful consideration, if not for pity?

Dr. Virgilio states that in Italy thirty-two per cent of the criminal population have inherited criminal tendencies from their parents. The same proportion is certainly to be found in every other country. Other well-known facts are, that the mortality among criminals is from one-third to one-half higher than that among the rest of the community, and that, while at present ninety per cent of the population of England can read and write — leaving ten per cent to be wholly illiterate — in the English prisons no less than twenty-five per cent can neither read nor write and seventy-two per cent can only read, or read and write imperfectly. A great proportion of the criminal class is thus mentally, morally and physically unfitted to hold their own by honest means in the struggle of life. Statistics show everywhere that the bulk of the criminals are almost always without a trade; the only kind of work they can turn to is rude manual labor, and this is exactly the kind of work which they have not the requisite physical strength to perform. Almost all forms of degeneracy render a man more or less unsuited for the struggle of life; and of degenerate persons, one who has to earn his own livelihood is much more

likely to become a criminal than one who has not. And how many of those who cannot get work or are unable to earn sufficient to lead a fairly human life, take to crime as an alternative !

Now, if a man is physically, mentally and morally unfitted for success in the world; if for one reason or another he does not possess the power to live honestly by his own exertions, although he might wish to do so; under what authority can we claim a right to throw him into prison—a course which in a great number of cases only makes a criminal out of him if he has not been one before ?

In spite of the general feeling that a starving man has a certain right to his neighbor's bread, that necessity knows no law, and that it is better for a man to commit a small offence than to expose himself to death, there appears to be very little real compassion for one who is in want; on the contrary, there still survives palpably a certain spirit of legalism—that the crime lies not so much in the theft or other offense, as in the poverty of the offender, in his lack of ability to get on in the world with being detected in violating the law. Thousands of instances could be cited where the rich and intellectually gifted man without any conscience is practically allowed to do whatever he pleases with his unfortunate and less-enlightened and less-experienced victims. For him moral duty does not exist, but, being well acquainted with the law, his shrewdness enables him to protect himself against the justice it embodies. Such instances are decidedly dark spots in the progress of civilization, and upon society, the state, rests the obligation to use every effort to remove them. But how ? If we are sometimes too weak or incapable to weigh the strong and powerful one in the infallible scale of justice, then we are in duty bound to be much more just and conscientious in weighing the weak and helpless.

But to be just, conscientious and humane, demands first of all that the spirit of revenge be abandoned, and that the enforcement of the criminal law be regarded as designed only for the protection of society and the prevention of further

crime. "Judge as well as law-maker," says Professor von Liszt, "deal with crime—manslaughter and murder—as if they were dealing with goods; they are unconscious of the importance—they overlook the individual." To secure full recognition for the importance, the value and the sacredness of the individual, is the simple and only problem of modern sociology as well as of penology; and the widely prevalent notion that the crime should be punished, not the criminal, requires to be reformed, to be humanized and civilized.

### III.

Just as we study the causes and consequences of a disease in a man in order to cure and remove it, so we must study the causes and consequences of criminality in the individual if we want to heal and remove it. The danger of contagion and other disastrous consequences is no less in case of crime, when left to itself, than in case of disease under the same circumstances. A madman or a person afflicted with a dangerous disease is prevented, for his own interests as well as the interests of the community, from freely moving about until he is restored to health; so the criminal, for his own interests as well as the interests of society, is prevented from moving freely about until he is cured from his criminal proclivity; and as in the first case so in the second, it is impossible to fix beforehand the date when the restoration to a normal condition will be effected. Therefore, no alternative seems to be left except that of sentences undefined in extent; that is to say, the sentence must be not for a certain period, but for a certain purpose, *i.e.*, until reformation is effected. It cannot be urged too emphatically that the question of the gravity of the offence—whether it is theft, embezzlement or murder, whether attempted or completed—is not what has to be dealt with, but the fact that an offence or irregularity of some kind, which threatens the safety and well-being of the community, has been committed; and this should sufficiently justify society in assuming the right to restrain the perpetrator until



there appears no longer any fear of his repeating a criminal offence.

Fair-minded authorities in every country almost universally agree that reformation of the offender is the solution of the problem. But what is this reformation? Where must it begin, and where end? The process should begin at the commission of an act which warrants society in refusing to allow the perpetrator to move freely in public life; and should end when the subject is brought to such a condition in body, mind and soul as to justify the anticipation that he will in future lead the life of an honest, law-abiding, self-respecting and self-supporting citizen; or, as the excellent clause of the Fassett Law expresses it:

When it appears to the said managers [referring to the Elmira Reformatory] that there is a reasonable probability that the prisoner will live and remain at liberty without violating the law, and that his release is not incompatible with the welfare of society, then they shall issue to such prisoner an absolute release from imprisonment. But no other form of application for the release of any prisoner shall be entertained by the managers.

This is the sole and entire meaning of "reformation"—the sole and entire end to be sought by the state in coping with the problem of crime and in dealing with the criminal. As soon as the prisoner possesses those qualities which society claims from its members, the state has accomplished its aim and duty and its jurisdiction is at an end.

"As to the amount of punishment," says Sir Edmund du Cane, "the stereotyped custom of assigning the periods of five, seven, ten, fourteen, twenty-one years penal servitude—a custom, no doubt, derived from the days of actual transportation—it is difficult to justify and may even defeat the great object." And here Mr. Havelock Ellis in his excellent work, *The Criminal*, justly remarks: "If our judges, before pronouncing sentence, were first to determine the years to be awarded by a solemn casting of dice, the result might be as good as those reached by the not very dissimilar system now adopted." In the short duration of the trial the judge can scarcely form

for himself a clear conception of the real nature of the offence, much less of the individual character of the offender and the relation of the one to the other. Nor can he, in spite of all the best intentions, say what kind of punishment or treatment will be most conducive to the reformation of the man and at the same time most advantageous to the community. The psychological and anthropological conditions of the individual are of such infinite variety, that no human being is capable of measuring pain and punishment in accurate proportion to the gravity of an offence. Instead of a fruitless search after the precise character and quantity of punishment to be assigned in each case, is it not better simply to draw the line by the single consideration, whether or not the individual is fit to live in society—whether he possesses those qualities which the community chooses to claim from its members. Until we seek out the causes and motives in each individual offence and apply strictly the principle that the offender shall not be liberated until these causes and motives are removed—until his bodily, mental and moral faculties are in such a condition as to be no longer dangerous to the well-being of the community, we shall never be able to approach the solution of the problem. By fixing at the outset the duration of the confinement, we run the risk of either turning the criminal loose upon society before he is cured, or detaining him after his cure has been effected. To make his release depend on the mere lapse of time must surely end in a wrong on one side or the other—a wrong to society or a wrong to the prisoner. Many who are to-day undergoing imprisonment for life or for long terms of years, to their own destruction and misery, to the misery and ruin of their families and at great cost to the state, might with safety be liberated, while on the other hand thousands and thousands are daily released, with the full knowledge that they will return at once to criminal pursuits.

It is a formidable fact that the prison population chiefly consists of recidivists. Germany's statistics, for instance, prove that eighty per cent of those who have once been in prison commit crime again, while scarcely any country in Europe

shows a less gloomy record. "Every relapse of a released convict is a living condemnation of the prison," says Dr. Mittelstaedt, and it needs no comment. If a criminal is allowed to live in continual alternation of liberty and imprisonment; if sentences of week upon week, month upon month, year upon year have been imposed upon him without effecting the slightest degree of reformation and improvement — without any but a negative and destructive purpose; if such a miserable being is locked up ten, twenty, fifty or a hundred times, and each time released to the danger of the community; is this not proof enough that there is something radically wrong in the whole system? Speaking in the spirit of Dr. Anderson: Does the law, with all its agencies, appear anything but a mere farce? Millions of offenders are sent annually to prison; thousands of officials are required to feed, clothe, occupy and instruct this army of criminals, and millions of money are spent annually for their maintenance and safety, for judicial proceedings, officials, police, *etc.*; and if any one asks the pertinent question: For what practical purpose? With what visible result? he may wait in vain for an answer. When we shall have advanced so far as to have wholly extirpated the old vindictive spirit of punishment in theory and in practice, and to have recognized that the end, and the only end, of imprisonment is the protection of society, the prevention of crime and the reformation of the criminal, only then shall we realize how utterly the present system fails of its true end — how entirely destitute of any return are the trouble and expense to which the honest members of society are subjected.

If a convicted man is as little fitted for social life at the expiration of his sentence as he was at the commencement of it, his punishment has merely satisfied the feeling of public vengeance, but has fulfilled only a negative purpose, accomplished only a destructive work. The imprisonment of the offender can only be justified where it aims to prepare the prisoner for liberty, for that life which he has to live after his release. From civil life he is taken, to civil life he has to

return. The ancient spirit of penology considers its duty fulfilled after the offender has been convicted and sentenced to imprisonment for such and such a length of time ; but the modern spirit says that the duty of the penologist just commences with the imprisonment of the convict. The prison is the place where the improvement, renovation and reformation of the criminal in body, mind and soul has to be effected ; its function is similar to that of the hospital, but wider in scope.

In no country of Europe is any attempt made to transform radically the character of the prisoner during the time of his imprisonment ; nor even to change the course of life of the first offender or to decrease the criminal population. Prisons here are in fact institutions for the incubation of criminals, rather than for their reformation. This is acknowledged by every authority on the prison question. As Dr. Paul Aubrey says : "The prison is still the best school of crime we possess." Taking into account the vast number of relapsed criminals, and the many first offenders who, for lack of proper and timely treatment, become through no fault of their own the so-called irreclaimable criminals, it is hard to maintain that the prison with the old *régime* exercises any deterrent influence whatever. But not only do such places of confinement fail to serve any beneficial purpose, either to the community or to the prisoner ; they even exercise systematically a demoralizing influence. The natural striving instinct in a man is blunted and extinguished, the prisoner thrown back into his low, primitive animal sphere and compelled to remain therein until the grave-digger mercifully finds room for him beneath the ground. One is fully justified in asking : Is there any reason for the further existence of such institutions in society ? The treatment of the hardened criminal is too lenient and of the reclaimable offender too severe. No sickly sentimentality or demoralizing cruelty, no undue leniency or sympathy, no excessive philanthropy, but the desire to be just — this is what is wanted : justice, based on purely human feeling, on the ethics of our existence and the progress in civilization.

## IV.

A full understanding of the fundamental principles of the system in force in the Elmira Reformatory furnishes the key to this momentous problem; and the introduction of this system—the physical, intellectual and above all moral sanatorium for reclaimable convicts—into every civilized country cannot be too emphatically recommended. Whoever pays a visit on a Sunday morning to the class in practical ethics in the Elmira Reformatory and witnesses the serious faces and moistened eyes, the play of lights and shadows over the uplifted countenances of the inmates, with their quick apprehension of fine intellectual distinctions and solemn spiritual truths—“condemned felons everyone, yet men, whom I had learned to love,” says Professor Collins, the late secretary of the educational department in Elmira—would no longer need to search for the quintessence of a rational reform of the old *régime*. This is the base upon which to operate; it speaks more of the soundness of the system pursued in Elmira than the fact statistically proved that over eighty per cent of the inmates are released as reformed and reclaimed human beings, and that a much higher percentage might be attained if the “indeterminate sentence” system were applied without restriction. The idea that the criminal cannot be improved and converted into an orderly, law-abiding and useful member of the community has no longer any foundation, since there is ample proof that means have been found to make the achievement of this end possible. In every human soul there is a spot which, if rationally cultivated and sown with good seed, could produce good fruits. The only difficulty lies in taking the trouble to find this spot; but, if we fully realize that the rational reformation of the criminal is only secondarily in his interests, but primarily in the interests of society, it certainly repays whatever trouble we take. The state, of course, does not owe a greater duty to the convict than to other individual members of the community, but reformation—the extirpation of the criminal germ by every available

means — is the only way to diminish criminality and to afford society real protection.

General Superintendent Brockway would say that the three chief factors of reform, if arranged in order of importance and the degree of influence which they exercise on the man, would be education, conduct and work ; for the schoolroom is alone qualified to bring an individual morally and intellectually to a full self-consciousness. This principle is the characteristic and most important feature of Brockway's system. Ignorance is, as statistics prove, one of the most formidable causes of crime. True practical education of mind and soul is a marvellous regenerative power, is the magic wand which converts criminals into honest, self-respecting and self-supporting men, is the only foundation of a sound moral character. Education in Elmira means ethical, intellectual and physical culture. The treatment, as individually as possible, consists on the physical side in awakening, strengthening and refining the flaccid muscular system and the blunted senses which are so common among criminals, and on the intellectual and moral side in accomplishing the prisoner's education, in curing his defective and undeveloped moral sense, in forming in him a sound and natural will power, in developing individuality and self-respect, in manufacturing character, establishing those virtues of which convicts are most in want and which are absolutely necessary for a man if he is to lead the life of an honest, self-supporting, law-abiding member of modern society. The educational system is directed more to producing right development rather than to furnishing with useful information. In the class for practical morality, commonly called the "ethical factory," for instance, the instructor takes up subjects connected with every-day life and treats them in their moral aspects. Such topics are discussed as these : "Is honesty the best policy?" "The ethics of politics." "The struggle for life." "Is war justifiable?" "The ethics of education." "The ethics of punishment." "Our first duty to humanity." "The abolition of poverty." "How does the competition in trade between the American and foreigner

affect wages?" "In case of necessity is it better to beg or to steal?" "Our first duty." Here, the prisoner is encouraged to give free vent to his opinion and in fact the most earnest interest that can possibly be found in any class is excited amongst these prisoners.

Moret defined the criminal character as "a morbid deviation from the normal type of humanity;" and the restoration of such a nature from the morbid to the normal cannot be effected more radically and thoroughly than by such a system — by developing in the prisoner the elementary principles of morality, by bringing him under the dominion of the ideas, habits and motives that everywhere pervade and impel the community and which are ordinarily sufficient to restrain men from the commission of crime. Thus we have the general principle or practical rule of "reformation." The prison management has to assimilate the condition of the prisoner to that of the free man and to cultivate in him the same habits, appeal to the same motives, awaken the same ambitions, develop the same views of life, and subject him to the same temptations that belong to the free community of which he is to be fitted to become a member. To accomplish this end the prisoners in the Elmira Reformatory not only receive industrial training in trades — thirty-two different trades are now carried on for instruction as well as for production — but also wages, out of which they have to pay for their food, clothes, medical treatment, *etc.*, just as a workman in ordinary life receives his wages and pays for his subsistence. It is impossible to conceive of another system capable of thus assimilating the prisoner's condition to that of the common civilian and making the subject fitted for civil life.

One drawback apparently prevails in Elmira as in most other prisons, namely, that the productive power of the prisoners is not fully utilized. Dr. Monat says :

It should not . . . be forgotten that the criminal, had he not taken to evil courses, would himself have competed with others of his own class or trade in the labor market. To teach him an industrial art that will enable him to gain an honest livelihood on

release, is merely to restore him to his natural position ; and surely it is an unmixed gain to society to convert by this means an unprofitable consumer into a profitable producer. We thereby create nothing new ; we merely transform an instrument of evil into one of good.

The cost of maintenance of a convict is an unjust tax upon the community, and bears more heavily upon the honest laborer than his natural competition in the labor-market. Everyone who lives has to earn his living ; and prisoners should be the very last to enjoy exemption from this rule. Every prisoner should maintain himself by useful work, and should not be allowed to live and die a debtor to the honest citizen. This law can be observed not only without injury to the individual, but with every advantage in helping to realize the ultimate end of reformation with the subject.

Obermaier in the Munich prison and Colonel Montesinos in Valencia prison introduced and carried on with their prisoners all kinds of industrial work ; the result being that each prisoner by occupation and industry maintained himself. Dr. Monat also informs us that two of the Indian prisons, Alipore and Hooghly, were continuously self-supporting, while the prisoners in six other prisons earned more than the cost of their maintenance. The prisons at Ghent produce annually a clear income of £5,000. In Coldbath-Fields prison forty prisoners made each a net profit of £17. 4. 1½d per annum, working seven and a half hours per day.

The indeterminate system of sentences is applied in Elmira with some restriction. Its advantages, however, are obvious there. It practically places the release of the prisoner in his own hands ; he has to work himself through until fit for liberation. While every assistance is afforded him to make progress, he has actually to strain his physical, intellectual and moral capacities to the very utmost in order to attain his goal. "The prisoners feel," as Brockway says, "at every moment the presence of pressing responsibilities ; their best energy is called forth to make the day count for progress, for enlargement." At every step, at every look, at every



thought, there is some rule or requirement calling for alertness, complete self-control and the fullest activity of the spiritual and physical man. The prisoners not only receive education, but special attention is paid to the occupation and continual direction of their mental and moral faculties throughout their waking hours, so that idleness or any temporary relaxation of mental tension appears to be impossible. The prisoner's desire for liberty, which is the foundation of the indeterminate sentence system, and which has nowhere else been utilized as a motive power for the renovation and reformation of offenders, embodies those elements which cause all progress in civilization—the very principles of the ethics of existence. And if we take away the natural stimulants of progress in a man, we also take away his living spirit and his moral will and power. To arouse and encourage the spiritless prisoner, and to foster in him hope and ambition until they become habitual, is the quintessence of the “indeterminate system”—the supreme art of a true reformatory prison management.

## V.

The idea of the indeterminate sentence is not new; it was first announced by Frederick Hill, late inspector of prisons for Scotland, and has since been advocated in one shape or another by various authorities on the criminal question, though the system was first put into practice by Z. R. Brockway at Elmira. In the discussions of the European International Association for the Reform of the Criminal Law—founded through the energetic initiative of Professor von Liszt in 1889, and consisting now of more than six hundred members from twenty-five different countries—the indeterminate sentence has constituted from the beginning the cardinal question; but although a growing demand for its introduction has been set up by theorists all over Europe, the system has nowhere there been put into practice. A great step, however, towards reform in the right direction, is the “probation system,” or conditional remission of punishment, adopted in various countries, as Austria, Belgium, France,

England, Italy and the United States. According to this, the judge is authorized in case of a first offender to defer the execution of the sentence for a certain length of time ; if the offender during this time does not fall again into the hands of justice, the penalty will ultimately be cancelled. In Austria the passage of the penal code referring to conditional release authorizes the judge, in cases which deserve special consideration, to defer, for a time varying at his discretion from one to three years, the execution of a sentence of imprisonment that does not exceed six months. This conditional release is not applicable to persons whose address cannot be identified, or who have already been convicted of crime or offence, or who are under police supervision. The Belgian law authorizes the suspension of execution in similar cases for a time not exceeding five years, with remission of the penalty in case of no new offence in that time, or, in the contrary case, with cumulation of penalties. The French code provides for a suspension for three years of a sentence to imprisonment for three months or less, with the same effects of good or bad conduct in the interval. A similar provision has been inserted in the new Italian penal code. In Germany, in spite of the fact that on the average seventy-eight per cent of all those convicted for crime or offence are sentenced to less than three months imprisonment, the suspension of punishment system has not yet been introduced, but, as Professor von Liszt says, "it can not be a question *whether*, but *how*, it is to be introduced into the German penal code."

These enactments for the suspension of punishment are dictated by the desire to keep a man out of prison as long as possible, in order to save him from social ruin, from the loss of his position in life, in short, from those conditions which threaten his very existence. But there is ample justification for the question : Of what use is it to open the prison door for a few weeks or a few months, when apparently the only result is to induce or oblige the offender to proceed with the commission of crime and to become a habitual criminal. This

privilege benefits only a very small percentage of the law-breakers, and practically does not reach those who are afflicted with the real criminal tendency. Thus the actual criminal classes in Europe are still left entirely to themselves. No law aims to convert them into rational beings, or to prevent them from committing crime and leading the life of the habitual criminal, and no prison management is capable of overcoming the defects and negative forces of the law. How many of the most hardened of criminals would be well justified in saying : " Had I only been properly treated for my first offence, no doubt it would have saved me." If every offence were thoroughly treated in the first case, by far the greatest part of all habitual criminals would be saved. The beginning of actual criminal conduct is the point at which the law must strike, at which the cure of the offender has to begin ; and unless he is brought under the care of men who have an intimate knowledge of civil life, and who take special interest in the cure of the subject, — more interest than is generally taken in return for the salaries paid, — it is vain to think of attaining the end in view ; the subject will never be brought into that state which makes him fitted to face the world on equal terms with the normal individual.

The objection has been raised that a reform system such as is advocated above would involve too lenient a treatment of the criminals and might even prove an incentive to many to commit an offence in order to partake of the advantages afforded thereby. Such an argument is merely speculative and has no real foundation. In fact, for the criminal and criminally inclined classes there is no severer punishment than physical, mental and moral elevation — occupation which leads and forces them into a better and nobler sphere of life: they have a decided preference for the low. Rev. W. D. Morrison, with his many years' experience with prisoners, says :

The actual criminal class persists in the life they have adopted merely because it suits them best. One of the great difficulties in dealing with persons of this stamp is their hatred of a well-ordered

existence ; in a vast number of cases the life they live is the only kind of life they thoroughly enjoy. "Let us alone and mind your own business," is the secret sentiment and often the open avowal of most of these people. "We should be miserable living according to your ideas ; let us live according to our own."

Crime, of course, will always remain inseparable from mankind ; but there appears to be no doubt that the criminal classes can be broken up, that the number of law-breakers can be reduced, and that "systematic and organized crime" can be stamped out of society, if not within one, yet certainly within a few generations.

ALEXANDER WINTER.

## THE LATE CHILIAN CONTROVERSY.

### I.

NEARLY two years have elapsed since the late controversy between the United States and Chili began, and it is a year and a half since it was ended. The incident may therefore be said to have become historical. In this light I propose to treat it. The discussions that appeared in the public prints when it was in an acute stage were based on telegraphic reports, which, while satisfying the demand for quick intelligence, can seldom present an accurate record of a prolonged transaction. It is my purpose to give a simple narration of the circumstances, chiefly as they are disclosed in the official publications of the United States.

In order to understand the controversy it is necessary to recur to a civil war in Chili, growing out of a dispute between two departments of the government, the executive and the legislative. This dispute reached an acute stage in October, 1890, when President Balmaceda, being unable to bring the Congress to satisfactory terms, closed an extraordinary session which he had called for the first of that month, appointed a ministry of his own partisans and prepared to rule without Congressional assistance. It had been expected that this extraordinary session would last till December, and when it was closed the appropriations had not been made for the ensuing year. When, therefore, the first of January came, the government was without a budget — a situation which the president had necessarily contemplated, and which he met by assuming to exercise dictatorial powers till the election of a new Congress in March, when he hoped to secure a majority of his own adherents. But early in January the leaders of the Congressional party proclaimed a revolution, in which they had the support of the larger part of the navy, under command of Jorge Montt, now President of Chili. Balmaceda retained control of the army. The government of the United States and other foreign

governments employed their good offices to compose the strife, but in vain. On the 28th of August, 1891, the Congressionalists achieved at Placillas a complete triumph.

Meanwhile certain events had placed the United States in an exceptional relation to the contest. As Balmaceda lacked naval support, he instructed his minister in Washington to endeavor to purchase from the government a man-of-war; and in the latter part of April Mr. Egan, then minister of the United States in Chili, being urgently solicited to do so, communicated a request from the Chilian president that the overtures of the minister might be favorably considered. To this request, when first transmitted by telegraph, the government of the United States made no reply. In June, when a despatch was received from Mr. Egan repeating the substance of his telegram, answer was made that the Navy Department had no ships for sale. If the United States had had a fleet for sale, the result of the application could hardly have been different. Prior to this correspondence, the Chilian minister had applied to the Department of State to prevent certain insurgent agents from shipping to Chili arms and munitions of war. This presented a different question. It is one thing for a government to sell a ship-of-war to a belligerent; it is another thing to permit the shipment of arms and ammunition. The first would be considered an unneutral act; the second would not. Therefore Mr. Blaine properly answered that by the laws of the United States, which were understood to be in conformity with the law of nations, the traffic in arms and munitions of war was permitted, subject to the belligerent right of capture and condemnation.

In April, 1891, a Congressionalist transport called the *Itata* put in at San Diego, California, to arrange for taking on board a cargo of arms and munitions of war which had been purchased in the United States, and which was to be transferred to her from a schooner called the *Robert and Minnie* at a place to be appointed. This indirect way of securing possession of the cargo was not without reason—an observation equally applicable to the attempt of the *Itata* to conceal her identity as an insurgent transport; since she might, as an insurgent vessel,

have been ordered out of the jurisdiction of the United States, though she had committed no act rendering her liable to judicial prosecution. But she was seized at San Diego on a judicial process, founded on an alleged violation of the neutrality laws of the United States. She succeeded, however, in communicating with the *Robert and Minnie*, and, while in the custody of an agent of the United States marshal, she steamed out of the harbor, met the schooner at San Clementi island, received the cargo of arms and ammunition and, after getting rid of the marshal's agent, sailed away to Chili under convoy of the insurgent man-of-war *Esmeralda*.

Immediately orders were given to the naval forces of the United States to pursue the *Itata* on the high seas as a fugitive from custody and seize her, and, if she was convoyed by a man-of-war, to take her by force if necessary. She succeeded, however, in reaching Iquique, when she was given up, together with the arms and ammunition, to the naval representatives of the United States, who brought her back to San Diego, where both the vessel and her cargo were libelled. The *Robert and Minnie* also was libelled and her crew imprisoned. A few weeks afterward the court discharged the schooner and her crew, holding that no offence had been committed. The *Itata* and her cargo were detained much longer; but the court ultimately held that the transaction was a legitimate commercial venture. An appeal was taken by the government, but the judgment has lately been affirmed by the circuit court of appeals for the ninth circuit. The Congressional leaders recognized the impropriety of the *Itata's* evasion of the custody of the court, and expressed regret for it. The feature of the case that seems to have been regarded by them as a hardship was the requirement to return the arms and ammunition, which they expressed an earnest desire to retain.

Two other incidents that appear to have created ill-feeling were the cutting of the cables of the Central and South American Telegraph Company and the visit of Admiral Brown to Quinteros Bay. The telegraph company, which is an American corporation, desired permission to erect a line from Valparaiso

to Santiago, and on to the Argentine frontier, in order to compete with the Transandine Telegraph Company. Balmaceda, whose communication with the north was cut off, refused to make this concession unless the former company, whose lines were open from Callao to Iquique, the Congressionalist headquarters, would open direct communication between Callao and Valparaiso. This was done about the middle of July by the company's steamer *Relay*, which cut the cable off Iquique and joined it in the deep sea, outside the three-mile limit, with the line to Valparaiso, against the wishes of the Congressionalists and under the protection of the naval forces of the United States. The question of the neutralization of cables is one as yet to be adjusted. By the fifteenth article of the convention of March 14, 1884, to which the United States is a party, for the protection of cables outside of territorial waters, it is provided that "the stipulations of this convention shall in no wise affect the liberty of action of belligerents." In this relation it is to be observed that the Congressionalists had not been accorded belligerent rights by the United States, nor, so far as the correspondence discloses, by any other power except Bolivia. But they had been seeking such recognition, and the cutting and joining of the cables under the circumstances which have been narrated seems to have been regarded by them not only as a pointed denial of belligerency, but also as an act of favor to Balmaceda. It appears, however, that the naval protection afforded to the *Relay* was rendered pursuant to an order given by Admiral McCann under his general instructions as to the protection of American interests, and without special direction from the Navy Department.

The visit of Admiral Brown to Quinteros Bay took place on August 20, eight days before the close of the war. He states that on the morning of that day it was known in Valparaiso that the Congressionalists had landed a force of perhaps ten thousand men at the bay, and that it was expected that a battle would be fought there. Subsequently he proceeded thither in the *San Francisco*, but finding no indication of a battle returned to Valparaiso. On his return he sent an officer



ashore with a telegram to the Navy Department, announcing that eight thousand Congressionalists had made a landing; but he states that this telegram was in cipher, so that no one knew of its purport. He also states that he cautioned the crew of the boat that went ashore against answering any questions, and that the officer brought back more information than existed on the *San Francisco*. While I accept without reservation Admiral Brown's account of this incident, there is evidence that the attacks upon him in the Chilian press were at least partly due to reports spread by Balmacedists, who do not appear to have been specially desirous to preserve the reputation of the United States as a neutral. In *The Nation* (New York) of October 8, 1891, there is a translation of a paragraph from the Balmacedist newspaper (all others having been suppressed) at Valparaiso, of August 21, publishing statements as to the landing of the Congressionalists, which were said to be based on "trustworthy news brought us by the (U. S.) war-ship *San Francisco*." The *Herald* correspondent refers, as a cause of ill-feeling toward the United States in Chili after the downfall of Balmaceda, to "lying official telegrams sent by Balmaceda's minister of foreign affairs, Aldernate."

Notwithstanding the incidents which have been narrated, the relations between the United States and the new government of Chili opened auspiciously. On September 1 Mr. Egan telegraphed that the Congressionalists were fully installed, and inquired whether he could "recognize the new government," adding: "Everything is tranquil." On September 4 he was instructed to recognize the government, if it was accepted by the people; and on the 7th he replied that he was "in cordial communication with the provisional government," and significantly added that it was "universally accepted by the people." On September 21 Mr. Egan telegraphed news of the suicide of Balmaceda, and repeated his former statement as to the prevailing tranquility. Similar reports were made by our naval officers. On September 9 Admiral Brown telegraphed from Valparaiso that, as the country was absolutely quiet, there was no necessity for his remaining. He left Sep-

tember 14; and Captain Schley, who had then arrived in the *Baltimore*, subsequently reported a condition of tranquility, saying that the foreign fleets were withdrawing, that his presence at Valparaiso was not demanded, and that he considered it advisable to have some repairs made which could not be obtained in Chilian ports. This was on September 23. On the 24th Mr. Egan sent to Washington the following telegram :

Mr. Egan states that all officials of the late government (including the ministers, senators, members of Congress and judges) would be prosecuted criminally. This has been resolved by the government. Seven ministers and twelve other refugees are in the legation. Intimation has been given Mr. Egan that he was expected to terminate the asylum and send the refugees out to be prosecuted. To do so would be to sacrifice their lives, and Mr. Egan has taken stand that he will permit them to go out of legation only under proper safe conduct to neutral territory. On account of *Itata* and other questions bitter feeling is being fomented by government supporters against Americans. Secret police surround the legation, with orders to arrest strangers visiting it. Two of Mr. Egan's servants had been arrested, and were now in prison. Against this disrespect to the legation Mr. Egan addressed a firm protest to the minister for foreign affairs.

Next day Captain Schley telegraphed to the secretary of the navy from Valparaiso that he had "just returned from Santiago"; that there was "strong feeling and great hostility among Chilians against American citizens"; and that "Mr. Egan had informed him that the authorities were giving him much annoyance on account of Balmacedists, who held prominent positions, taking refuge in the American legation." Captain Schley specified as the causes of hostile feeling the *Itata* case, the cutting of the cable, the visit of the *San Francisco* to Quinteros Bay, and a false telegraphic report that Balmaceda had escaped in the *San Francisco*. The false report to which Captain Schley refers was sent by Lieutenant Sturdy, an officer of the *Baltimore*, on September 14, the day the *San Francisco* left Valparaiso for Callao. From New York the report was telegraphed back to Chili, and it can scarcely

be considered remarkable that, as Captain Schley afterward stated, it "caused much excitement and strong feeling against American citizens." Lieutenant Sturdy was suspended from duty, and his telegraphic correspondence was stopped.

## II.

We now stand at the threshold of the Chilian controversy. The incidents which have heretofore attracted our attention had not been made the subject of international contention, though, with the exception of the report as to Balmaceda's flight, they all occurred prior to the formation of the new government, and immediately after the downfall of Balmaceda they became topics of animadversion in the press. But when the report came that the authorities were reflecting the popular ill-feeling by treating the legation of the United States with disrespect, the scene was suddenly and completely transformed. The question became international, and the possibility of a conflict was suggested. Captain Schley was ordered to remain at Valparaiso, and to make such necessary repairs as could be effected on board ship.

On September 25 Mr. Egan telegraphed that during the two preceding days twenty persons, some of whom were Americans, had been arrested for entering the legation, and that others had been prevented from entering by warning of the police. On the following day instructions were telegraphed to Mr. Egan, by direction of the president, "to insist firmly that the respect and inviolability due to the minister of the United States and to the legation buildings, including free access, shall be given and observed, fully and promptly, by the Chilian authorities," that the government of the United States would consider in a friendly spirit whether asylum had properly been granted, when the facts were more fully before it, but that it could "not allow to pass without a firm protest the evidence of disrespect towards its minister which Mr. Egan reported." On the same day Mr. Egan was also instructed by telegraph "to promptly and fully inform the department of all the facts." Mr. Egan's response to these telegrams was dated September

27, and was received the next day. He stated that arrests had ceased but that espionage by the police was still kept up; that the minister for foreign affairs charged that the refugees had abused the right of asylum, and on that ground defended the action of the government; that he had informed the minister that the charge was absolutely and entirely unfounded, and had asked for safe conduct for the refugees; that similar requests were made by him two weeks before, informally, but that orders were given that all persons leaving the legation should be arrested, and that many were thus obliged to procure passports to visit the legation. The rest of the telegram was as follows :

The names of the refugees and the offences charged (none of them being charged with common crimes), are as follows : Gana, responsibility as the commander-in-chief of the army and as minister and senator; Ibañez, Mackenna, Cruzat, Valdez Carrera, Mackenna, as ministers and senators; Ricardo Vicuña and Ovalle, senators; Cotapas, member of congress; Camus and Pinto Agüero, officers of the army; two sons of Cotapos and Pinto Agüero, no office. Spanish minister has asked for safe conduct for five persons in his legation. Safe conduct was immediately granted to two officers of the army who entered English legation. Refugees are also in German and other legations. Process commenced after asylum was granted, and minister of foreign affairs fully recognized the correctness of Mr. Egan's action. The rights and dignity of the legation, Mr. Egan says, he shall firmly maintain.

On September 30 Mr. Egan telegraphed that the minister for foreign affairs refused to grant the refugees safe conduct or permission to leave the country, besides maintaining the correctness of all that had been done by the authorities, and repeating "the unfounded and absurd charges of the refugees conspiring in the United States legation." This telegram was received October 1. On the same day Mr. Wharton, Acting Secretary of State, telegraphed to Mr. Egan as follows :

Mr. Egan is informed that the president desires to establish and maintain the most friendly relations with Chili, but the right of asylum having been tacitly, if not expressly, allowed to other lega-

tions, and having been exercised by our own minister with the old government in the interest and for the safety of the adherents of the party now in power, the president cannot but regard the application of another rule, accompanied by acts of disrespect to our legation, as the manifestation of a most unfriendly spirit. Mr. Egan is instructed to furnish a copy of this to the minister for foreign affairs and to take the utmost precaution to prevent any abuse of the privilege of asylum by those to whom he had extended it; their intercourse with outside persons, whether by person or by letter, should be under his supervision and limited to the most necessary and innocent matters. The discussion and adjustment of the matter would probably be much facilitated were there an authorized agent of Chili at Washington.

Issue has now been joined. Mr. Wharton's telegram discloses that the impression of unfriendliness was based on the supposition (1) that what was denied to the legation of the United States was allowed to other legations; (2) that the denial was attended with a manifestation of disrespect toward that legation. These allegations, as it seems to me, were directly responsive (1) to the association of the policing of the legation with the fomentation of bitter feeling by supporters of the government against Americans on account of the *Itata* and other questions; (2) to the apparent freedom of other legations from annoyance, though they were reported also to be sheltering refugees; (3) to the fact that the Spanish minister had asked for safe-conducts, apparently without unpleasant results, while the informal requests of the American minister had been followed by the issuance of orders to arrest persons leaving the legation; (4) to the statement that safe conduct had immediately been granted to two persons who entered the English legation.

On October 6 Mr. Wharton renewed his telegraphic inquiries as to the refugees in other legations and the conduct of the government in regard to them. Mr. Egan replied on the 8th, and his telegram, though long, I give in full:

Mr. Egan acknowledges receipt of Mr. Wharton's telegram of the 6th instant, and states that eighty persons sought refuge in his legation after the overthrow of the Balmaceda government; about the

same number in the Spanish legation, eight in the Brazilian, five in the French, several in the Uruguayan, two in the German and one in the English. Balmaceda sought refuge in the Argentine. All these have gone out except fifteen in his own legation, one in the German and five in the Spanish. From the 23d to 25th September, when the arrests were made at his legation, several arrests were also made of visitors to the Spanish legation. No protest, however, was made, owing to the fact that the new minister, having recently arrived, had not then been officially received. The other legations were not molested. Spanish minister is seeking safe conduct for refugees in his legation, and will act in entire harmony with Mr. Egan. All acts of the late government since the first of January last, including the election and proceedings of Congress, have been decreed by the present government unconstitutional, and the refugees are charged with crime in having acted without constitutional authority in their several positions. The refugee in the English legation, having promised to go home and remain there, has been permitted to go. Others have been allowed out on bonds to submit themselves to the tribunal. Those in the Spanish and United States legations would be subjected to heavy penalties, and in some cases death. No one has been granted a safe-conduct to leave the country. The press of Buenos Ayres and Montevideo contain extremely strong articles against the attitude of the government towards the supporters of Balmaceda. Mr. Egan's note of the 1st instant has not yet been replied to by the minister for foreign affairs.

This telegram seems entirely to remove the grounds that previously seemed to exist for the supposition that the Chilian authorities were acting in an exceptional manner toward the United States and their minister. The charge of partiality toward the British legation is corrected by the statement that no one had been granted safe conduct. The Spanish legation was treated precisely as was that of the United States. The freedom of other legations from molestation is explained by the statement that all the refugees, except one in the German, had gone out. Further light is thrown on this feature of the case by dispatches received in Washington in November.

The decree for the institution of proceedings against officials of the Balmaceda government was issued September 14, but the policing of the American and Spanish legations did not

begin till the 23d. In a despatch of September 29 Mr. Egan says that "the Brazilian legation had several refugees, some of whom were liberated under bond, and others, for whom the government refused safe conduct, sought concealment elsewhere, as did also some refugees who were in the French legation." The form of this statement indicates that the departure of those refugees was not recent, and doubtless some of them were referred to in a dispatch of October 17, in which it is stated that "when the first excitement settled down," many of those who entered the various legations after the battle of Placillas went out, "some of those who had but slight responsibility giving bond to appear before the tribunals when required, and others seeking concealment in the houses of the supporters of the successful party." The only person, a Colonel Mason, who took refuge in the British legation was, it is stated, "immediately allowed to go to his house under promise that he would remain there, but was not given safe conduct out of the country." From the despatch of September 29 we learn also that the refugee in the German legation was a prominent Balmacedist, General Velasquez, ex-minister of war, but it is stated that, encouraged by the German minister, he proposed to give himself up as soon as he recovered from the effects of an accident from which he was suffering. The only refugee in the Argentine legation, Balmaceda, committed suicide September 19.

After October 1 both the American and the Spanish legation incurred annoyances. On one occasion some of the detectives got drunk, knocked at the windows and used insulting language to the refugees, whom they had seen in an apartment facing the street. The police, observing the disorder, abated it, and Señor Matta, the minister for foreign affairs, said that such misconduct would not find in his department "support or excuse." After the middle of December the espionage was for a time increased. At the Spanish embassy detectives sat on the door-steps, and various persons, among others the ex-President of Ecuador, while leaving it were arrested. On December 19 Mr. Egan's son, who was an employee of

the American legation, was stopped by a detective on the street, but was liberated when recognized by the police. As Mr. Egan had then suspended communication with the foreign office, because of an offensive circular issued by Señor Matta, he sent for the Argentine minister and through his good offices obtained a promise that the detectives would be withdrawn, leaving only the policemen in uniform.

The limits of this review do not admit of an extended discussion of diplomatic asylum; a full exposition of that subject may be found in previous numbers of the *POLITICAL SCIENCE QUARTERLY*.<sup>1</sup> The general view of the government of the United States, as expressed through a long series of years, is well stated in the printed *Personal Instructions to Ministers*, in which the following rule is laid down:

In some countries, where frequent insurrections occur and consequent instability of government exists, the practice of extraterritorial asylum has become so firmly established, that it is often invoked by unsuccessful insurgents, and is practically recognized by the local government to the extent even of respecting the premises of a consulate in which such fugitives may take refuge. This government does not sanction the usage, and enjoins upon its representatives in such countries the avoidance of all pretexts for its exercise. While indisposed to direct its agents to deny temporary shelter to any person whose life may be threatened by mob violence, it deems it proper to instruct its representatives that it will not countenance them in any attempt to knowingly harbor offenders against the laws from the pursuit of the legitimate agents of justice.<sup>2</sup>

These instructions have apparently never been revoked or modified; and it may here be noticed that in a case that arose in Chili in 1851, Mr. Webster, then Secretary of State, whose opinions are always entitled to deference, instructed our minister in that country that if the government objected to his sheltering a particular refugee, he must advise such refugee that shelter could no longer be afforded.

In this relation it is proper to say that there does not appear to be any ground for charging Mr. Egan with partiality in his

<sup>1</sup> Volume vii, pages 1, 197, 397 (March, June, September, 1892).

<sup>2</sup> Wharton's Int. Law Dig. § 104.



assertion of the right to grant asylum in Chili. While Balma-  
ceda was in power, he sheltered two prominent Congression-  
alists, and when it was made known to him that the government  
was contemplating a search of his domicile, he informed the  
foreign office that he would himself shoot the first man who  
attempted to enter for that purpose. Fortunately, the govern-  
ment desisted from its design. On more than one occasion a  
refugee has been taken from a diplomatic residence—it was  
done even in Madrid as early as 1726—but no violent resist-  
ance has been offered; nor does it seem possible that under  
circumstances such as these a public minister would be justified  
in killing the authorized agent of the government to which he  
is accredited. The question is a public one, and the govern-  
ment is responsible if it does any wrong. Mr. Seward once  
instructed our minister to Hayti that “in all cases the exercise  
of the right [of asylum] should be attended as far as possible  
with delicacy toward the state concerned, and with forbearance  
from all appearance of arrogance and dictation.”

The Chilean minister for foreign affairs, did not, however,  
deny the right to grant asylum. On the contrary, he declared  
that such a right was a logical consequence of the extra-  
territoriality of a minister's domicile—that is to say, its  
absolute exemption from the action of the local government;  
and, therefore, he neither offered nor threatened to take the  
refugees by force. I think this view is palpably unsound and  
dangerous. If it be sound, the right of asylum as certainly  
exists at Washington as at Santiago. The government of the  
United States cannot accept such a doctrine. But, while Mr.  
Egan and Señor Matta agreed on this question of theory, they  
differed widely as to its consequences (1) as to the right to  
police the domicile, and (2) as to the right to demand safe  
conduct for the refugees. These questions I have fully treated  
elsewhere.<sup>1</sup> The policing of a minister's domicile, when it is  
used as an asylum for refugees, is a measure of such ancient  
origin that it may be said that the memory of man runneth not  
to the contrary. It is recognized as a legitimate measure, and

<sup>1</sup> POLITICAL SCIENCE QUARTERLY, VII, 228-231 (June, 1892).

has constantly been enforced in this hemisphere. Nor can safe-conducts be demanded as of right. Señor Matta, after vigorously defending, against the protests of Mr. Egan, the right of the police authorities to act outside the legation without reference to the foreign minister's dictation, and insisting that safe conduct was granted only as of courtesy, not as of right, closed the correspondence on the 23d of October, declaring that it was "useless to continue an exchange of notes which could only lead to a sterile discussion."

On September 24 there were nineteen refugees in the legation. On September 29 the number had been reduced to fifteen. Before the 17th of October one of these went out on bond. In a despatch of December 4 Mr. Egan stated that the government still hoped to induce the United States to surrender for punishment the refugees then in the legation, and the punishment in one case at least, that of General Gana, would, he was assured, be very severe. On January 9, 1892, he escorted two refugees to Valparaiso and put them on board the United States man-of-war *Yorktown*. On the 13th he and the Spanish and Italian ministers disposed of five refugees from the American legation and two from the Spanish in the same manner. These were all that remained. What had become of the rest does not appear, though the correspondent of the *Herald*, in a dispatch from Valparaiso of January 13, stated that one of the nine who were in the legation apparently at the opening of the year, had determined to stay in Chili "and fight his case out in the courts." To the last the government refused to grant safe-conducts, and the refugees were transported on the *Yorktown* to Callao. With the departure of the refugees, the police were removed from about the American and Spanish legations. It does not appear that any one of the refugees who remained in Chili was put to death.

Besides those in the *Yorktown*, many refugees were carried away on other United States men-of-war. The English ships refused to receive any. Mr. Egan states that there were none on the French ships, which lay far from the shore. The Balmacedist president-elect, Vicuña, and Admiral Viel were

received on the German man-of-war *Leipzig*. On September 4 the *Baltimore* sailed for Peru with nineteen refugees, of whom a part had been sheltered by her and the rest by the *San Francisco*. The *San Francisco* received other refugees prior to her departure from Valparaiso on September 14, when, as Admiral Brown has said, "both at Santiago and Valparaiso perfect order existed." When he arrived at Callao on the 20th he wrote that he had brought two "prominent" refugees, but their names were not given. The *Herald* correspondent, on September 24, telegraphed from Lima that the two "mysterious refugees" were Señor Ovalle Vicuña and Colonel Vidaurre, members of a Balmacedist military court — Vidaurre being president of it — which, on the 19th of August, condemned to death forty-two young men, whose ages ranged from sixteen to eighteen years, on a charge of conspiracy. The *Herald* correspondent states that they were "massacred and their bodies subjected to frightful indignities." Mr. Egan, whose account may be more accurate as to details, states that they were youths of the highest standing, who had gone out from Santiago to form a band of *montenéros*, or guerillas; that they were surprised and thirteen or fifteen of them shot, and that eight were taken prisoners; that the latter, "many of them boys of fifteen to twenty years of age," were on the following morning "shot in cold blood and under circumstances of great barbarity."

I have given both accounts; they differ only as to details. The savage act they describe was not an act of civilized warfare. I cannot vouch for the identification of the "mysterious refugees." If it was inaccurate, it might well have been formally contradicted, for the report justly provoked indignation in Chili. Lord Palmerston once said that a British ship-of-war had always been considered a safe place of refuge for persons fleeing "from persecution on account of their political conduct or opinions," whether the refugee was "escaping from threats of a monarchical government or from the lawless violence of a revolutionary committee." Whoever may have been the refugees on the *San Francisco*, such was

not their situation. The country was "absolutely quiet," and the government, though provisional, had been recognized by the United States and other foreign governments, and was "universally accepted by the people." Its jurisdiction over the inhabitants was not to be questioned. On October 4 the *Herald* correspondent telegraphed from Valparaiso that the expected return of the *San Francisco* was regarded in Chili "with undisguised disfavor." Admiral Brown himself telegraphed from Callao on the 11th of that month that, "taking into consideration the strong feeling in Chili against the American squadron," he doubted "if an increased naval force at Valparaiso would improve the state of affairs." That the extensive deportation of refugees by our men-of-war partly accounted for that feeling, is obvious, and this fact is specially important since the suspicions and resentments, however groundless they were, arising from antecedent causes, were in the popular mind confirmed and greatly intensified.

### III.

On October 16 Captain Schley, who, since the controversy as to the refugees in Santiago arose, had remained at Valparaiso in the *Baltimore*, gave a hundred and seventeen of his men liberty. As his action has been criticised, it should be stated that on October 12 he telegraphed to the Navy Department that ill-feeling was less manifest and everything quiet. About six o'clock in the evening of the 16th, two of the men became involved in an altercation with a Chilian, and were mobbed. Their names were Riffin and Talbot, and I will summarize the latter's account of the affair as given at Mare Island, in the United States, Riffin having been killed. When they landed they got their money changed, and went to the eastern end of the town, where they entered a saloon. After remaining there about fifteen minutes they went to another saloon, where they stayed about ten minutes. After leaving the second saloon they strolled along the street for probably an hour, when, with two of their mates, they took a cab for the western part of the city, where Talbot and Riffin entered a dance-hall

and saloon called "The Shakespeare." The proprietor told them that he was going to close up, and that they would have to go out, as a crowd of disbanded sailors and soldiers, the roughs of the town, intended to "tackle" them, and he did not want any trouble in his saloon. (Another of the men states that the saloon was closed; that the proprietor said he had heard there was going to be trouble, and that he was not going to have a row in his place, since he had "paid two or three fines for that kind of doings before.") Talbot did not pay much attention to what the proprietor said, and laughed at it; but he and Riggin left and went to a dance-hall called "The Home of the Free." Passing it by, however, they entered, about half-past three, an adjoining saloon called "The True Blue," on the Calle de Arsenal, where they found four of their shipmates. Talbot first states that he and Riggin remained there "maybe an hour"; later, he says about twenty or twenty-five minutes, or half an hour. But he did not have a watch, and he states that his conjectures as to time were "just guessing." He and Riggin started, however, to leave "The True Blue," with a view to go to the other end of the town, that in which they then were being, as Talbot states, "the lowest part of the city," and they wanted "to get up town to a better quarter." Riggin went out first. Talbot remained to speak to some one, he thinks the woman at the bar, and when he reached the door he saw Riggin in the middle of the street "talking to a Chilian man-of-warsman." The Chilian "seemed to be putting himself up as though he was getting ready to fight." Talbot ran across the street and "asked Riggin what was the matter." He forgot what Riggin told him, but "he said something about the Chilian trying to pick a row with him, or something like that." Talbot got between Riggin and the Chilian, and seizing them pushed them aside, and told the Chilian to "go off" or "shove off." The Chilian spat in his face, and Talbot knocked him down. Talbot claims to have been perfectly sober. At the beginning of the altercation he did not see any one in the street except those immediately implicated. A moment later the street

was filled with Chilian roughs. Talbot and Riggин, compelled to flee, ran down the Calle de Arsenal—"We ran the wrong way," says Talbot; "if we had run the other way, we would have been all right"—and sought refuge in a street car. The mob, who picked up cobblestones as they ran, smashed the car, and after a few minutes Talbot and Riggин abandoned it. They were at once surrounded by the mob, some of whom had knives. Some American sailors in the vicinity ran to succor their companions. Riggин was first stabbed, and then shot. Talbot was stabbed, but escaped. Another American sailor was killed, and eighteen others stabbed or beaten. Only one Chilian was wounded. The riot lasted nearly an hour. The overwhelming numbers of the Chilians, as well as the character of the injuries inflicted on the Americans, are conclusive as to the fact that, whatever the attitude of the parties to the original disturbance may have been, the American sailors were ultimately compelled to act on the defensive, and were ruthlessly and brutally pursued and attacked by the mob.

A board of investigation on the *Baltimore*, on October 19, found that the riot was attributable to bitter feeling on the part of the mob toward the American sailors, as shown by acts and expressions, and to a desire to rob them, several cases of such robbery having occurred; that there was not a single attack, but several; that, the police not interfering, the worst of the assault lasted about an hour, and that the police maltreated some of the American sailors. In regard to the death of Riggин, the board found that he and Talbot were drinking in "The True Blue" with a Chilian sailor, when a dispute arose and the Chilian spat in his face; that Talbot knocked him down, and that during the fight a mob of sailors and civilians rushed in upon them; that Talbot and Riggин forced their way out, and took refuge in a street car, which they were compelled to leave; that while an American seaman named Johnson was carrying Riggин, who had then been stabbed several times, to an apothecary's, a squad of police came charging up the street with fixed

bayonets, and when at close quarters fired at Johnson, whose face was blackened by the discharge from one of the pieces, while a second shot passed through Johnson's clothing and killed Riggin. The board also found that the sailors from the *Baltimore* were unarmed, and that, as seen on the street by their officers at various times in the afternoon, they were strolling about in a quiet and orderly manner, saluting all officers, American and foreign, especially Chilian; that most of the sailors in the mob were men recently discharged from the Chilian fleet, and that in one case Chilian men-of-war-men assisted one of the American sailors against the mob.

On January 8 Señor Montt, the Chilian minister in Washington, stated that the prosecuting attorney of Valparaiso, after an examination of the testimony given by the witnesses before the criminal court of that city, was of opinion that the riot originated in a broil between drunken sailors and assumed extensive proportions owing to the character of the quarter in which it took place, which was inhabited by disreputable people and abounded in places for the sale of liquor; that the police, as shown by the testimony of all the witnesses, except two of the sailors from the *Baltimore*, did their duty; that the shot that killed Riggin was fired from a revolver, and could not have been fired by the police, who used carbines. Señor Montt also stated that the prosecuting attorney had brought accusations against Carlos Gomez, Federico Rodriguez and Ahumada, Chilians, and Davidson, an American, who appeared to be guilty, and had asked that the legal penalties be imposed upon them as follows: Gomez, three to five years' penal imprisonment; Rodriguez, from two to eighteen months, and Ahumada and Davidson, twenty to forty days' imprisonment. In the *Herald* of February 9 there appeared under date of the preceding day the following telegram from Valparaiso:

Judge of Crimes Foster to-day passed sentence in the long pending and much discussed *Baltimore* assault case of October 16, 1891. His sentence is subject to review by the Court of Appeals. The document covers 180 pages and goes all over again the evidence against

the accused and compares it closely with the evidence presented by the prisoners. The finding of the court is as follows: Carlos Arena, alias Gomez, sentenced to 540 days' imprisonment for wounding William Turnbull, the coal heaver of the *Baltimore*, who died of his injuries; 300 days for public disorder, 60 days for carrying a knife and 20 days for giving an assumed name. This makes a total of 920 days. José Ahumada, sentenced to 320 days' imprisonment for injuring Turnbull. Federico Rodriguez, sentenced to 140 days' imprisonment for wounding boatswain's mate Charles W. Riffin, another of the murdered American seamen, for public disorder and for carrying a knife. It is held by Judge Foster that the evidence does not show that Rodriguez killed Riffin. On the contrary it is claimed that Riffin's death was caused by a shot which was fired by some unknown person. Gomez and Rodriguez, under the Chilian penal code, must pay the families of Turnbull and Riffin damages. These damages are recoverable by civil suit.

In three very remarkable cases within its own borders the government of the United States has been required to consider the question of the responsibility of a government for mob violence, and it has maintained the general and settled principle that a government is not assumed to be responsible for sudden tumults and their consequences, unless it is bound to render special protection. In the riot at New Orleans, August 21, 1851, a lawless assemblage of persons, acting in resentment of the rumored execution by the Spanish authorities of some of the participants in a military expedition set on foot in that city against the island of Cuba, attacked the Spanish consulate, destroyed the furniture, threw the archives into the street, defaced the portrait of the Queen of Spain, and tore into pieces the Spanish flag which they found in the office. The consul fled for his safety. Property of private subjects of Spain was also destroyed. On November 13, 1851, Mr. Webster, then Secretary of State, writing to the Spanish minister, expressed deep regret for the outrage, but denied that the government was bound to indemnify private persons. He acknowledged a special liability in regard to the consul, and promised that, if he should return to his post, he would be received and treated with courtesy, and with a national salute to the flag if he



should arrive in a Spanish vessel. Referring to this subject in his annual message to Congress, President Fillmore said :

As in war, the bearers of flags of truce are sacred, or else wars would be interminable; so in peace, ambassadors, public ministers and consuls, charged with friendly national intercourse, are objects of especial respect and protection, each according to the rights belonging to his rank and station.

An indemnity was subsequently paid for the damage done at the consulate, as well as to the property of Spanish subjects; but in the latter case it was paid as a gratuity.

On the 2nd of September, 1885, twenty-eight unoffending Chinese were driven from their homes and massacred at Rock Springs, in the Territory of Wyoming, their dwellings burned, their property destroyed, fifteen of their companions beaten and wounded, while for twelve hours the local authorities stood by in all the supineness of warm approval. The "judicial proceedings" that followed have been described as a burlesque; the Chinese minister said that with his imperfect knowledge of American procedure, he preferred not to discuss them. No attempt was made to punish the guilty. Mr. Bayard, then Secretary of State, writing to the Chinese minister on February 18, 1886, expressed indignant regret at the outrage, but denied the liability of the government to make indemnity. He stated, however, that in view of the shocking character of the outrage and the shameful failure of justice, the president would recommend the subject to the benevolent consideration of Congress, with the distinct understanding that a precedent was not to be created. Congress appropriated, and the government of the United States subsequently paid, an indemnity, which was declared to be an act of humanity and not of obligation.

On the morning of March 14, 1891, eleven persons in the custody of the law at New Orleans, five of whom had not been tried, while three had been acquitted and three were to be tried again, were slaughtered by a mob in the parish prison in that city. On the following day Mr. Blaine, Secretary of State, telegraphed to the governor of Louisiana that it had been represented by the Italian minister that among the victims of

the deplorable massacre that had taken place there were three or more Italian subjects; that the treaty with Italy guaranteed to such subjects "the most constant protection and security for their persons and property"; that the president deeply regretted that the citizens of New Orleans should have so disparaged the purity and adequacy of their own tribunals as to transfer to the passionate judgment of a mob a question which should have been judged dispassionately and by settled rules of law; and that it was the hope of the president that the governor would co-operate with him in maintaining the obligations of the United States toward the Italian subjects who might be within the perils of the prevailing excitement, that further bloodshed and violence might be prevented, and that all offenders against the law might be promptly brought to justice. A copy of this telegram was communicated to Baron Fava, the Italian minister. The Italian government, however, urgently insisted on a promise of reparation, and failing to obtain it, withdrew its minister. When informing the government of the United States of his proposed departure, Baron Fava defined the demands of Italy as follows:

The reparation demanded by the government of the King . . . , was to consist of the following points: (1) The official assurance by the federal government that the guilty parties should be brought to justice; (2) the recognition, in principle, that an indemnity is due to the relations of the victims.

In a note of April 1, 1891, to the Marquis Imperiali, who became *chargé d'affaires* on the departure of Baron Fava, Mr. Blaine, referring to those demands, stated that while the government of the United States had recognized the principle of indemnity to any Italian subjects who might have been wronged by a violation of the treaty, it would not, in a matter of such gravity, "permit itself to be unduly hurried," nor "make answer to any demand until every fact essential to a correct judgment shall have been fully ascertained through legal authority." Mr. Blaine added with great force that while the impatience of the aggrieved might be natural, its indulgence did not always secure the most substantial justice. The Italian

government having interpreted Mr. Blaine's language as containing an admission that indemnity was due, Mr. Blaine, in a note to the Marquis Imperiali of April 14, corrected that impression, and stated that the question whether the treaty had been violated was one upon which the president, with sufficient facts before him, had taken full time for decision. After an examination of the facts and of the law applicable to the case, Mr. Blaine concluded his note as follows:

If, therefore, it should appear that among those killed by the mob at New Orleans there were some Italian subjects who were resident or domiciled in that city, agreeably to our treaty with Italy and not in violation of our immigration laws, and who were abiding in the peace of the United States and obeying the laws thereof and of the state of Louisiana, and that the public officers charged with the duty of protecting life and property in that city connived at the work of the mob, or, upon proper notice or information of the threatened danger, failed to take any steps for the preservation of the public peace and afterwards to bring the guilty to trial, the president would, under such circumstances, feel that a case was established that should be submitted to the consideration of Congress with a view to the relief of the families of the Italian subjects who had lost their lives by lawless violence.

Whether the special liability that rests upon a government in respect to ministers and consuls, or that which may well be held to exist in respect to persons in the custody of the law, may under certain circumstances be applicable to sailors from a man-of-war, it is, perhaps, unnecessary to consider. If a minister or a consul, forgetful of his rank and station, should seek diversion in dangerous places frequented by lawless characters, it is hardly probable that the right to special protection as an official would follow him. It is commonly stated in the books that a man-of-war enters a foreign port with the implied consent of the local government. Her entrance is so described because, being a representative of the armed force of another government, she cannot claim to enter as of right. When her crew go ashore they are subject to the local law. They are also entitled to its protection. No respectable government will look on with unconcern when

either its uniform or its citizenship is made the ground of unprovoked aggression on the part of a mob. No friendly government will refuse to punish and to disavow such an aggression committed within its jurisdiction on the sailors or the citizens of another power. The question whether that aggression has been committed is a proper one for legal investigation, and the question of responsibility depends upon the facts and the law applicable to them. The consideration of the responsibility of Chili for the acts of the mob at Valparaiso was at once diverted from the usual course by a turn in the diplomatic correspondence.

On the twenty-third of October—the day on which the correspondence as to refugees was closed at Santiago in mutual irritation—instructions were telegraphed to Mr. Egan to represent to the Chilian government that, although the attack on the American sailors took place on the 16th instant, no expression of regret, or of a purpose to make searching inquiry with a view to the institution of proper proceedings for the punishment of the guilty parties, had, so far as the United States was advised, been offered. Mr. Egan was also directed to bring to the attention of the foreign office the account of the riot as reported by Captain Schley after the investigation on the *Baltimore*, and to inquire whether there were any qualifying facts in the possession of the Chilian government, or any explanation to be offered of an event that had very deeply pained the people of the United States, not only by reason of the killing and pitiless wounding of their sailors, but even more as an apparent expression of unfriendliness toward the United States, which might put in peril the maintenance of amicable relations between the two countries.

Mr. Egan executed these instructions on October 26, and Señor Matta replied on the following day. His response was an angry and passionate one, and is not to be defended. He referred to the communication to which he was replying as expressing conclusions, formulating demands and advancing threats, which, without being cast back with acrimony, were not acceptable, and said that until the time came to make

known the result of the judicial proceedings he could not admit that the silence of his department should appear as an expression of unfriendliness toward the government of the United States which might put in peril the maintenance of amicable relations between the two countries. The government of the United States, deeming the note offensive, did not reply to it.

Señor Matta also stated in his note that while he did not protest against the investigation held on the *Baltimore*, he would abide by the jurisdiction of the authorities of his own country, which were the only ones that possessed the right and power to punish the guilty in the territory of Chili; that since the date of the riot the authorities of Valparaiso, administrative and judicial, had, as was known to the commander of the *Baltimore*, been engaged in ascertaining who were to be blamed and who were to be punished for the very deplorable but not yet determined or adjudged occurrence that took place on the 16th instant; that the judicial investigation of the facts, which in Chilian practice was called *sumario*, was secret up to a certain point, and that until the time came to make it public his department did not possess and could not transmit the knowledge of the guilt or the guilty which might result from that investigation; but that as soon as the investigation should be concluded he would bring its result to the knowledge of the minister of the United States.

In regard to the proceeding called *sumario* in the Spanish law, it is proper to explain that while it is tedious and often protracted, all the evidence being carefully reduced to writing, it is analogous to our proceeding by grand jury, and like the latter, is strictly secret, only sworn officers and witnesses usually being admitted. When the note of Señor Matta was written, only ten days had elapsed since the riot, and if the principles of law he stated had been properly presented, they doubtless would have received respectful consideration.

When the president's annual message to Congress on its assembling in December, and the report of the secretary of the navy, both containing statements in regard to questions pending with Chili, became known in Santiago, Señor Matta

sent to the Chilian minister in Washington, and at the same time officially published, a circular in which, while denying in detail the accuracy of these statements, he declared that they were based on erroneous information or were deliberately incorrect, and that in regard to the affair of the *Baltimore* there was "no exactness nor sincerity in what was said at Washington." Such language requires no characterization. After the publication of this circular, Mr. Egan suspended intercourse with the foreign office.

On January 1 a new ministry was announced. Mr. Egan telegraphed that two of its members were his personal friends; that he had excellent relations with them all, and that conciliation would mark their disposition toward the United States; that at least two of the cabinet had openly disapproved the Matta circular, that it was strongly condemned by public opinion and that it would not, as he thought, be difficult to have its terms disavowed or the circular itself withdrawn. He further stated that he thought "all the questions, safe conduct for refugees, assault on the *Baltimore* men, and disrespect to the legation," would be completely settled; and he reopened communication with the foreign office. On January 4 Señor Montt communicated to Mr. Blaine the text of the following telegraphic instructions:

Inform the United States government that a summary of the attorney-general's report relative to the occurrences of October 16, which Chili has lamented and does so sincerely lament, will be sent on Monday, the 4th instant.

In communicating the summary on January 8, Señor Montt said:

I have also received special instructions to state to the government of the United States that the government of Chili has felt very sincere regret for the unfortunate events which occurred in Valparaiso on the 16th of October. Although incidents of this nature are not rare in ports frequented by sailors of various nationalities, the fact that deaths and wounds were caused in the disturbance of the 16th of October, the zeal with which the Chilian authorities are accustomed to watch over the personal security of all who tread its territory, the

fact that persons employed in the service of a friendly nation were concerned, and the frank desire for American cordiality which my government entertains, have led it cordially to deplore the aforesaid disturbance and to do anything in its power toward the trial and punishment of the guilty parties.

#### IV.

The final chapter in the Chilian controversy may be briefly told. The last refugee left the legation January 13. On January 16 Mr. Blaine instructed Mr. Egan to urge upon the Chilian government the prompt withdrawal, freely and in suitable terms, of everything in the Matta circular of a discourteous character. On January 21 Mr. Egan, whose recall had on the preceding day been requested on the ground that he was not *persona grata*, reported that he had had an interview with Señor Pereira, the new minister for foreign affairs, on the 18th instant, and that the latter had promised to consult with his colleagues as to the withdrawal of the circular and to make answer in another interview specially appointed, but that the interview had not taken place. A telegram was then sent to Mr. Egan, demanding of the Chilian government "a suitable apology" and "some adequate reparation" for the attack on the sailors of the *Baltimore*, and the public withdrawal of the Matta circular with a suitable apology, on pain of severance of diplomatic relations. In regard to the request for Mr. Egan's recall, it was stated that it would be time to consider that suggestion after a reply to the demands of the United States had been received, since it would then be known whether any correspondence could be maintained with the government of Chili on terms of mutual respect. This telegram Mr. Egan communicated to the foreign office with a note of January 22. On the 25th President Harrison transmitted all the correspondence to Congress, with a message reviewing the questions it presents. Maintaining that in regard to all of them the attitude of Chili had been unfriendly, he stated that communications in regard to the case of the *Baltimore*, which he held to be an unprovoked, if not premedi-

tated, attack on the uniform of the United States, had not in any degree taken the form of a satisfactory expression of regret, much less of apology. In this relation he referred to the very full and emphatic expressions of Mr. Webster in the case of the New Orleans riot of 1851, and he also expressed the opinion that if the demands of the United States were not complied with, they should be enforced.

On the same day Mr. Egan telegraphed Señor Pereira's very extended response to his note of the 22d. It was received by the president on the 26th and was communicated to Congress on the 28th, with the statement that it was so conciliatory and friendly that in his opinion there was a good prospect that the differences between the two governments growing out of the case of the *Baltimore* could be adjusted on satisfactory terms by the usual methods and without special powers from Congress. Señor Pereira withdrew with appropriate expressions the Matta circular. He made further expressions of regret for the killing and wounding of the sailors of the *Baltimore*, and offered, if the United States insisted on it, to forego the termination of the judicial proceedings and submit the question of reparation to the Supreme Court of the United States. In regard to the request for the change in the *personnel* of the legation of the United States in Santiago, he said that his government would "take no positive step without the accord of the government of the United States." Responding on January 30 to the communication of Señor Pereira, Mr. Blaine instructed Mr. Egan to assure the Chilian government that the president would "be glad to meet in the most generous spirit" the "friendly overtures" of the Chilian government.

In July, 1892, the Chilian government placed at the disposal of the United States the sum of seventy-five thousand dollars in American gold, requesting that it might be distributed among the seamen who were wounded in the riot and the families of the two who were killed. With the reception of this sum, the incident lost its controversial aspect.

JOHN BASSETT MOORE.



## THE PRUSSIAN ARCHIVES.

### I.

THE record offices or depositories of archives in Prussia, as in other countries, are central and local. The central office is located at Berlin, the local offices are in the cities. Of the provinces each, with the exception of Brandenburg, has one or more of these depositories. Brandenburg has none, because its records have always formed a part of the collection belonging to the Prussian state. Since the beginning of the present century the collections in all the provinces have been brought under the control of the central bureau, and thus, from an administrative point of view, they form a part of the national archives. This course has not been followed in the case of the cities.

For centuries the memorials and documents belonging to the Margraves of Brandenburg were moved from place to place as the residence of the prince changed. In the time of the first Hohenzollern it is probable that they were deposited at Tangermünde. During the fifteenth century they were brought to the city of Brandenburg, and finally, after the collection had increased considerably in amount and value, they found a permanent abiding place at the capital of the principality on the Spree. The margraves of the sixteenth and seventeenth centuries took an increasing interest in the collection. Joachim II began special efforts to enrich it. In the last year of the sixteenth century Erasmus Langenhain was appointed to take charge of it, and from that time it received something like systematic administration. The Great Elector devoted much personal attention to its development, and since 1700 the central administrative bureaus have, with the exception of the *General-Directorium* created by Frederick William I, regularly deposited their papers in the archives of the state. Frederick William I provided rooms where the archives were preserved until they were removed to the old electoral palace in *Klosterstrasse*, where they are now kept.

Till the *General-Directorium* was abolished in 1808, its papers — which concerned administration in the departments of war, finance and public domains — were kept apart from the regular state collection (*Geheime-Staats-Archiv*). The latter then included the documents which related to the history of the royal house, matters which were discussed or decided in the privy council of the king, royal ordinances, and papers relating to foreign affairs and to the administration of justice. Here also were the documents relating to the general ecclesiastical history of the country. As soon as the old *Direktorium* was abolished it was proposed to unite the two collections, but instead the papers of the defunct body were transferred to the ministry of finance. In its care they remained until the beginning of 1874, when they were added to the state collection proper, and the Prussian Archives assumed its existing form. Its treasures are being constantly increased by transfers from all the departments of the central government and from the provinces. The most serious losses which it has suffered during this century have come from the formation of a separate collection in the royal palace, and the transfer of about four hundred early documents to the provincial towns whence they had come.

In the provinces, with a very few exceptions, no attention was paid to the preservation of documents till after the beginning of this century. They existed, to be sure, in out-of-the-way places, and those which were needed for practical purposes were used by officials, but no effort was made to arrange or preserve them. After the close of the Napoleonic wars officials both of the central and the local governments began to turn their attention to the masses of documents in existence concerning the history of mediaeval and early modern society in all its phases. The German historical school was already in existence and it directed attention to these things. The growth of interest in the subject was moreover a result of the quickening national life. Any country where this is vigorous will take care of its memorials. In the history of Prussia those rulers and statesmen who have been most animated by the

national spirit have done most for the preservation of its archives. Prince Hardenberg furnishes an illustration of this. When the office of chancellor was created in 1810 and he became its incumbent, he assumed charge of the archives. Under his lead, after the war had closed, the work of collecting documents was prosecuted. In 1820 he caused an ordinance to be issued for the formation of archives in the provinces which then existed. Two years later a directory was formed to which was given control of all the archives in the country, save those in the possession of individuals or corporations. Under this arrangement the collections in the provinces began to feel the stimulating influence of the central office at Berlin. After Hardenberg's death the control of the archives passed to the ministry of foreign affairs. With that it remained till 1852, when the minister-president was given control, provision being at the same time made for a director of the archives, who should have immediate charge of the work. Since 1866 the system of administration has been extended to the provinces gained in that year.

At present, then, there are in Prussia seventeen public record offices. The work done in these is under the charge of sixty-two trained officials, who have obtained their scientific equipment in the historical, philological and juristic *seminaria* of the universities. Appointments are not made upon examination, but appointees are subjected to a probationary test of three months. The result has been to bring into the service a corps of men eminently qualified to perform the duties required. The amount appropriated yearly by the Prussian government for the care of the archives is 350,000 marks—a sum inadequate for the purpose. Attempts have been made to secure an increase of the grant, but hitherto without success. The fact, however, that the archives are annually used by no less than 1200 men engaged in scientific research, testifies to their value and to the success of the system upon which they are administered.<sup>1</sup>

<sup>1</sup> For these and other facts the writer is indebted to Dr. H. von Sybel, the director of the archives, and to his assistants. They have with great kindness furnished the information requested.

Previous to 1875, the date when Dr. von Sybel was placed in charge of the archives, but little of their contents had been published, and that little consisted for the most part of documents bearing on the history of the mediaeval emperors. But the government had already become convinced of the advantages which would come to the nation and to the world by making its collections more accessible. In this way not only would science be advanced, but the reputation of Prussia would be increased through the opportunity for a deeper and more widely extended knowledge of her history. Therefore, under the influence of Prince Bismarck, an increased appropriation was obtained<sup>1</sup> to enable the newly appointed director to carry out his plan. The coöperation of specialists from all parts of the kingdom was secured and soon the preparation of several works was in progress.

Though the archives of Prussia were found to be full of valuable material, searches were not confined to them, but were extended to local and foreign collections. The plan included the publication of materials on mediaeval as well as modern history, on the history of Germany as well as that of Prussia, and also on separate territories and provinces. It was laid down as a general rule that the earlier texts should be printed in full, but that only extracts should be given of later repetitions or confirmations of such documents. In modern times the mass of letters and other materials has become so great as to make a complete reproduction impossible. Therefore it has been found necessary to enforce the rule of careful selection with increased strictness. But in this, as in everything else which pertains to the scientific execution of the work, it has been found necessary to rely largely upon the judgment of the individual editors. Each of the volumes issued contains an introduction, stating with more or less fulness the character and location of the manuscript sources whence its contents have been obtained, and the principles by which the editor has been guided in preparing the texts for publication. In most cases the introduction is expanded

<sup>1</sup> See statement at beginning of Volume I of the Publications.

into an historical outline of the subject treated in the volume, the material for this being drawn mainly, though not exclusively, from the texts themselves. In a few cases the historical introduction has been so extended that it has come to occupy the leading place. Thus the work becomes substantially a history with illustrative documents. Each separate text is furnished with a brief caption stating its subject matter. All are carefully numbered and dated. It will thus be seen that greater freedom of action is allowed the editors than in the English Record Office. The reason for this probably is that the work of editing the Prussian publications is largely done by specialists, not by officials. In England this is true of the *Chronicles and Memorials*, but not of the *Calendars* and other publications. The plan employed in Prussia is, we are told, in part an imitation of that pursued by the Historical Commission of Munich.

The *Publications from the Prussian Archives*, so far as issued, fill forty-nine large octavo volumes. They throw light on all periods of the country's history, and upon the history of nearly all the principalities which have been annexed to Brandenburg and which go to make up the modern Prussian state. In the east Prussia, Silesia, Grosspolen (Posen) receive attention. In the west much space is devoted to the history of Cleves and the principalities connected with it, to Westphalia (especially the city of Münster), to Hanover and to Hesse. Coming nearer to the center of power, the *Urkundenbuch* of the bishopric of Halberstadt is printed in this series, while some of the more general works have to do with Prussian history as a whole, either at certain periods or in some of its important aspects. Of the documents printed in the series by far the larger part lie between the dates 1400 and 1700; they contain materials for the history of central Europe at the close of the middle age and during the two centuries when the religious question was uppermost. In a few of the works are documents of an earlier date, in others matter bearing on Prussian history in the present century is found. From the period specially covered it follows that not a little of the material contained in the volumes is

ecclesiastical or semi-ecclesiastical in character. For the purpose of briefly reviewing the contents of the series, it may be well to subdivide it into three parts: (1) that which deals exclusively with mediæval history; (2) that which concerns the period of the Reformation (1500–1648); (3) the volumes which throw light on the more recent history of Prussia.

## II.

Of the works bearing on the middle age<sup>1</sup> all except one are collections of the characteristic mediæval documents — the *Urkunden*. By this word, as used by specialists,<sup>2</sup> is meant any written evidence of a legal transaction, or documents leading directly to or proceeding directly from such juristic acts. If issued by emperors, kings or popes, they are known as public *Urkunden*; when proceeding from any other source they are treated as private. Under this classification nearly all the documents in these volumes are private *Urkunden*. The Polish *Grodbücher* contain the records of the cases brought for trial before the *judicia castrensia* (*grod* = *castrum*), or lower courts, which during the middle age were held in the castles and were presided over by a dignitary or noble of the locality. Each court had originally jurisdiction within its district over cases of housebreaking, of assault committed on the persons of women, of arson and of breaches of the peace on the king's highways. As time went on their jurisdiction was extended so as to cover a great variety of civil suits brought by peasants against the

<sup>1</sup> The works comprised in the first group are as follows :

J. von Leckzycki, Die Aeltesten Grosspolnischen Grödbücher. 2 vols. (Nos. xxxi and xxxviii of the series.)

Arthur Wyss und Heinrich Reimer, Hessisches Urkundenbuch. 3 vols. (Nos. iii, xix and xlviii of the series.)

Dr. Gustav Schmidt, Urkundenbuch des Hochstifts Halberstadt und seiner Bischöfe. 4 vols. (Nos. xvii, xxi, xxvii and xl of the series.)

Dr. C. Grünhagen und Dr. H. Markgraf, Lehens- und Besitzurkunden Schlesiens und seiner Einzelnen Fürstenthümer im Mittelalter. 2 vols. (Nos. vii and xvi of the series.)

Dr. Joseph Hansen, Westfalen und Rheinland im 15. Jahrhundert: Erster Band, Die Soester Fehde; Zweiter Band, Die Münsterische Stiftsfehde. (Nos. xxxiv and xlii of the series.)

<sup>2</sup> H. Bresslau, Handbuch der Urkundenlehre, vol. i, and references.

nobles, and suits arising out of commercial transactions. Thus they took their place as the lowest among the royal courts, with the right to hear both civil and criminal cases. The records of the courts within the districts of Posen, Peisern, Gnesen and Kosten for the last decade of the fourteenth century are here printed in full, and judging from the character and amount of the business done, they must throw much light on the social conditions of the times.

The *Urkundenbücher* of Hesse and Halberstadt contain a greater variety of documents. In the former the materials relate to the history of the commandery of the Teutonic Order in Hesse during the thirteenth and the first half of the fourteenth century, and to the origin of the province of Hanau. In 1207 the Count of Ziegenhain granted a church at Reichenbach to the Teutonic Order. In 1221 the Emperor Frederick II took the order under his special protection. Then gifts began to pour in upon it from the ecclesiastics and nobles of central and western Germany, particularly from the Landgraves of Thuringia. After the death of St. Elizabeth of Thuringia the order came into possession of the hospital which she had built at Marburg. Then they began to reap the full benefit of her saintly reputation, and under the favor of the popes and the nobles their wealth and influence grew apace. Before the close of the thirteenth century the commandery of Hesse had been formed, which in due time grew into the principality of that name. The growth of this territory, till the order which held it had firmly established itself in Prussia, may be traced in detail in these volumes. Here is the documentary evidence of the grants of land and of the great variety of rights, privileges and exemptions which went with it. Here are the gifts, sales, exchanges, releases of estates, and the repeated confirmations of such acts. We find evidence also of the favor of later emperors. In 1357 Charles IV took the hospital at Marburg under his protection and appointed the prior of the order at that place his chaplain. Repeatedly the popes encouraged gifts by the grant of indulgences.

In the four volumes on Halberstadt the history of that bishopric, and of the ecclesiastical corporations which it contained, can be traced from the founding of the see in the ninth century to 1425. The materials here are wider in scope than those relating to Hesse; for, in addition to property transactions and grants of favor, they have reference to the election of the archbishops, to their confirmation by the popes, to their election capitulations, to their disputes with neighboring princes, and in fact to the entire archiepiscopal policy on its secular side.

In general, what is done by the works just referred to for two of the smaller territories, is done for one of the largest, and for the principalities and counties into which it was divided, by the volumes on Silesia. These cover its history during the last two centuries of the middle age, after Poland had in 1335 abandoned all claim to it in favor of Bohemia. The documents bearing on the relations between it and the Bohemian crown, and on the connection with Hungary which was thereby occasioned, form the most important part of this collection.

The next two volumes are of quite a different nature. They introduce the reader to the conflicts among the principalities, and between those and the cities, in western Germany during the fifteenth century. They contain the documentary history, with elaborate introductions, of the feuds between the Archbishopric of Cologne on the one side, and the city of Soest and the Bishopric of Münster on the other, which occurred about the middle of the century. Soest was a member of the Hansa, and shared fully in the ambitions which were at this time so strong among the German city populations. She had long been trying to free herself from the jurisdiction of Cologne, but had not succeeded, when the ambitious Dietrich of Moers became archbishop. About 1435 questions began to arise concerning the right of the archbishop to hold courts (the *Freigerichte*) and levy taxes in Soest. This affected all his Westphalian possessions and a combination was formed against him. At the same time the archbishop was involved in a dis-



pute of long standing with the Duke of Cleves concerning the possession of the Duchy of Berg, together with other related questions. Cleves and Cologne were in fact rival principalities, the one secular, the other ecclesiastical, and each was striving after the leadership in northwestern Germany. Cologne, however, had much the larger possessions. The Duke of Cleves was related to Philip the Good of Burgundy, and both these princes for political reasons threw their influence on the side of Pope Eugenius IV in his struggle with the Council of Basel. The archbishop, on the other hand, was one of the leaders of the opposition in that council. It was natural that Soest, as soon as her controversy with Cologne became serious, should apply to Cleves for aid. She recognized the duke as her lord, and he in return contributed troops and supplies to the full extent of his powers. When the archbishop invoked the support of King Frederick III, the duke with the help of Burgundy called in the aid of the pope. Decrees were obtained deposing the archbishop and freeing Cleves from the jurisdiction of the see of Cologne. Cleves was even permitted for a time to have a separate bishopric. The archbishop immediately sought alliance with France, which was counted among the anti-pope's party at Basel, and through the aid of Saxony he called in a large force of Bohemian mercenaries who, since the close of the Hussite wars, were ready for any service in Germany. Thus the feud extended till it involved directly or indirectly many of the leading European powers. In the end the city of Soest was saved by the strength of its walls and the resources of its allies. Though on the accession of Nicholas V the decrees of his predecessor against the Archbishop of Cologne were reversed, the latter had to consent to negotiations which left Soest in the possession of Cleves, though the latter was not freed from the archiepiscopal jurisdiction (1449). This holds a prominent place among the triumphs won at this time by the cities over the princes.

But the policy of Cologne in Westphalia was not changed, and after a brief cessation the feud was resumed under a modified form. This time it began in a dispute over the

succession to the see of Münster (1450). Its last incumbent was a brother of Dietrich of Cologne, and now under the influence of the latter the cathedral chapter chose a second brother to succeed. This was opposed by the people of Münster and of many parts of the bishopric, who had been sympathizers with Soest. Count John of Hoya put himself at the head of this party, and from his family the opposition candidate was selected. The Duke of Cleves at once gave him his support, and the controversy extended much as in the previous case. But the chief interest in this struggle attaches to the career of John of Hoya. He played the demagogue with such success as to gain the full confidence of the populace of the city. But after the feud had been in progress awhile, trade began to suffer and it was seen that the bishopric was becoming the sport of neighboring princes. The supporters of Hoya then began to divide, and a conservative faction among them sought compromise and peace. Hoya thereupon instituted a democratic revolution in the city and became its tyrant. All who opposed his sway were driven out. This shows the excitability of the populace there nearly a century before they were bewitched by the Anabaptists. The Hansa now condemned the revolutionary proceedings, the Duke of Cleves relaxed his efforts, and the forces of Münster were severely defeated in the field. The policy of John of Hoya seemed likely to prove fatal to the cause, when the archbishop's candidate died, and an opportunity was thus presented for a settlement of the dispute by the election of a member of the Bavarian house to the see. The exiles were allowed to return, the revolutionists had to abandon their control, but the family of Dietrich of Moers never again held the influence in Westphalia which it had previously possessed. By wise and cautious policy Cleves had won the chief advantage from the feuds, and the power of Cologne began from this period to decline. These volumes enable one to see with great clearness how Cleves was situated and what her policy was just previous to the beginning of the Reformation.

## III.

Coming now to the works treating of the Reformation,<sup>1</sup> we find that the materials printed consist for the most part of private and diplomatic correspondence. The volumes on the history of the Reformation in Prussia form an exception to this. In these the documents are miscellaneous in character, and but comparatively few of them are printed in full. They are briefly referred to by title or outlined. But this is in part atoned for by the fulness of the introduction, which, based on the materials here brought together, occupies an entire volume. In it the author describes the social condition of Prussia as it was at the beginning of the sixteenth century, showing how a population mainly Slavic and Lithuanian in origin was governed by Germans organized into a semi-ecclesiastical corporation. The heavy taxes levied by the Teutonic Order provoked general opposition, which showed itself most acutely among the native nobles and burghers. A radical change in the political system had become necessary. The ideas then gaining a foothold throughout Europe were favorable to secularization, and Albert of Hohenzollern, the new Grand Master, accepted and applied them. The transformation of Prussia into an hereditary dukedom (1525) was agreeable to the wishes of the emperor, for he thought that thereby its connection with the empire would become closer. This was to be the result, but not in the way the emperor wished. Duke Albert had already been under the influence of Luther and at Nuremberg of Osiander. He had adopted the reformed

<sup>1</sup> Dr. Paul Tschackert, *Urkundenbuch zur Reformationsgeschichte des Herzogthums Preussens*. 3 vols. (Nos. xliii, xlv, xlv of the series.)

Max Lenz, *Briefwechsel Landgraf Philipp's des Grosmüthigen von Hessen mit Bucer*. 3 vols. (Nos. v, xxviii and xlvii of the series.)

Ludwig Keller, *Die Gegenreformation in Westfalen und am Niederrhein, 1555 bis 1609*. 2 vols. (Nos. ix and xxxiii of the series.)

Georg Irmer, *Die Verhandlungen Schwedens und seiner Verbündeten mit Wallenstein und dem Kaiser von 1631 bis 1634*. 3 vols. (Nos. xxv, xxxix and xlv of the series.)

Dr. Otto Meinardus, *Protokolle und Relationen des Brandenburgischen Geheimen Rathes aus der Zeit des Kurfürsten Friedrich Wilhelm*. 1 vol. (No. xli of the series.)

opinions, and when he attempted to carry them into practice in Prussia, he met with little opposition. The hold of Catholicism on the people was weak. Some still adhered to their pagan faith. So backward was the country intellectually, that humanism had not struck root there. So different were the conditions from those which prevailed in the West-European states, that the country could be said to be only nominally Catholic. Therefore in 1523 Polnitz, the foremost bishop, resigned his secular power, and the reformed faith was established at Königsberg. Thence it spread rapidly, and by the time the Order was secularized, the Reformation had triumphed. Changes analogous in every way to those made in the churches of Electoral Saxony and Brandenburg were introduced. Lutheran preachers were sent into the principality, the university at Königsberg was founded. Thus the secular and the ecclesiastical revolution in Prussia went hand in hand. The history of the movement from the ecclesiastical standpoint is fully treated by the author till about the middle of the century, when the founders of the Prussian church were all removed by death.

While Albert of Hohenzollern and his supporters were laboring for the reformation of Prussia, Martin Bucer, the Strasburg preacher, was trying to smooth the differences between sects and thus to keep the peace in Germany. To this he devoted his life, whether on the continent or in England. Not only did he stand almost in the front rank among German Protestant theologians, but he also possessed a wide knowledge of men and affairs. He was in communication with the leaders of the time among all parties, and his sympathies were broad enough to enable him to understand their views. During the third and fourth decades of the century he corresponded more or less regularly with Philip, Landgrave of Hesse. The correspondence began when preparations were making for the conference at Marburg in 1629 over the differences which were causing strife between the Lutherans and Zwinglians. In this Bucer was greatly interested, though his policy of peace did not win a complete triumph till the issue of the Wittenberg Concordia in

1536. Later Philip summoned him to aid in checking the progress of the Anabaptist heresy in Hesse, and in this he was successful. Meantime Bucer's letters show that he was brooding over plans for bringing the Protestants of Germany, France and England into closer relations and for influencing the monarchs in their favor. He proposed the sending of Melancthon to England and intervention on the part of the German princes to win Henry VIII over to Lutheranism. But the princes never found the plan feasible, though Bucer continued to urge it long after the divorce of Anne of Cleves.

The relations between Bucer and the landgrave were most intimate between the years 1539 and 1542. It was during this interval that Philip incurred the guilt of bigamy. All the Protestant leaders were greatly disturbed by this, and it was only through the help of Bucer that they were brought to countenance the relation between Philip and his so-called second wife. For nearly two years also the landgrave was working hard to bring about a union of the German princes, both Catholic and Protestant, against the emperor, and in the interest of the "liberty" of the estates. The most important of these negotiations were carried on with the Duke of Bavaria, and with the plan was involved that of saving Cleves and Guelders from falling into the emperor's power. If the scheme should succeed, it was hoped that the Protestants would secure their freedom, and the constitution of the church be reformed. Bucer came forward with a plan to secure this and urged the coöperation of Catholics and Protestants against a national peril. When the plan failed through the inactivity of the estates, the landgrave at once made overtures of peace to the emperor. To prevent Philip from allying himself with the French, Charles V through Granvella encouraged these advances. In the following negotiations Bucer was very prominent, and they prepared the way for the great theological debate before the emperor at the diet of Regensburg, 1541. Bucer bore a leading part in this debate, hoping to secure a national council and ultimate agreement as to essentials between the contending parties. But the Protestants were no more successful in their efforts to bring

the emperor to satisfactory terms than they had been in trying to unite the estates in opposition to him.

The acts of this diet are printed in these volumes, together with the correspondence of the parties engaged in the negotiations which preceded it. The correspondence as printed continues till 1547, and touches, among other things, on Bucer's residence at Cologne at the time Hermann of Wied was attempting the reformation of the archbishopric, on the feud between the Protestants and Duke Henry of Brunswick, on the condition of parties just before the outbreak of the religious war.

The last work in the series the contents of which directly concern the Reformation is Ludwig Keller's *Gegenreformation in Westfalen und am Niederrhein*. This contains documents, with the usual explanatory chapters, illustrating the efforts of the clergy and the Catholic powers, especially the Spanish, operating from the Netherlands, to suppress the Reformation in Cleve-Mark and Jülich-Berg and in the bishoprics of Münster and Paderborn. Here we have still another chapter in the history of that much-agitated middle region, adjoining the hereditary Burgundian territories and encircled by the great ecclesiastical principalities of the West. When the Religious Peace was concluded, not only the Augsburg Confession, but also the Reformed faith and the Anabaptist heresy, had gained a firm foothold among its populations, and their power of resistance, moreover, was increased by the large number of their co-religionists who fled thither from the Netherlands. The Calvinists and Anabaptists were not protected by the Peace. After the diet of Augsburg, in 1566, the aid of the Spanish under Alva and his successors was invoked, Duke William of Cleves and his sons were converted from their liberal (Erasmian) opinions and practices to Catholicism, a papal nuncio was sent to Düsseldorf, and efforts were everywhere made to discourage or suppress Protestant worship. A marriage was concluded between John William, the second son, and a princess of the house of Bavaria. That power then took a leading part in promoting the Catholic cause in Cleves. But the daughters of the old

duke could not be induced to abandon their Protestant faith, and one of them, Maria Eleonora, in order that she might be removed as far as possible from the court, was married to the Duke of Prussia. This proved in the end a fatal step for the Catholics, for from it originated the claim of the Hohenzollerns to the united duchies of Cleves and Jülich-Berg, together the strongest principality in northwestern Germany. Soon after his marriage John William was associated with his father in the government. Then (1583) the work of restoring Catholicism began in earnest. But such was the opposition and the anxiety caused thereby, that before ten years had passed the young duke became insane. A dispute arose in consequence over the rights of his wife, the Bavarian princess, as regent. This divided the Catholic forces and opened up the prospect of the Hohenzollern succession. The council of the duchy, which was Catholic, obtained the support of the Spanish and of the emperor, and thus was able successfully to resist all the efforts of the Protestants. The princess was excluded from the government and, it was thought, murdered; Spanish troops were introduced from the Netherlands, and the religious privileges which the cities had so jealously guarded were violated with a high hand. Still, in spite of all efforts the Catholics were only partially successful. The mad duke was married a second time, and disputes similar to those which had arisen before were repeated. Thus the confusion and conflict of parties continued till the death of John William in 1609. Then the Hohenzollerns took possession as joint rulers with the Palsgrave of Neuburg, and the ultimate triumph of Protestantism in the principalities seemed assured. In Münster and Paderborn, because they were ecclesiastical principalities and the Jesuits were admitted to special influence, the movement toward Catholic restoration was more successful than in Cleves.

The volumes treating of Gustavus Adolphus and Wallenstein have an interest more directly political than the preceding works on the period of the Reformation. The career of Wallenstein and diplomatic relations during the critical period of the Thirty Years' War have long been a favorite subject for

investigation. The editor in his introduction briefly reviews the method of treatment to which the character of the great imperialist general has been subjected. He shows that the historians who preceded Ranke were either his uncompromising defenders or opponents. They either accepted *in toto* the statements of Rašin, the Bohemian diplomatist who had stood high in the confidence of Wallenstein and who sold his information to the emperor, or they sought wholly to discredit his account. To those who pursued the former course the general seemed a traitor from the outset. Ranke was the first to treat the subject objectively and to subject to criticism all the materials known in his time. He refused to adopt either the imperialist or the Bohemian standpoint. The result was the picture of a man who at first, with the help of the Swedish king, tried to make for himself an independent place in Germany, and who, after the death of Gustavus Adolphus, labored to counteract the clerical and Spanish influence in German politics, and sought, with the aid of Electoral Saxony and Brandenburg, to establish a freer and more independent system.

This view the editor accepts. He believes that the documents previously published and those contained in his own volumes go to substantiate it, though he admits that so much still remains undiscovered, especially private papers, that points in the career of Wallenstein will long be subjects of dispute. He himself has searched widely among the archives of the states of northern Europe which were engaged in the conflict, while Gindely and others have devoted themselves more especially to Spanish and Italian authorities. The most important new material printed in these volumes was discovered in Hanover and Sweden. It consists of the diary and a part of the correspondence of Lawrence Nicolai, a Swedish diplomatist who came with Gustavus Adolphus to Germany and resided at Dresden till the autumn of 1633, and of the correspondence between Chancellor Oxenstiern and Bernhard of Weimar during parts of 1633 and 1634. The papers of Nicolai throw much light on the negotiations between Wallenstein and the Protestants during the year following the battle of



Lützen. The correspondence between Maximilian of Bavaria and Richel, his vice-chancellor resident in Vienna, and between the Austrian generals, Gallas, Piccolomini and the rest; some papers of Arnim, the Saxon diplomatist, and of Alex. Erskein, the Swedish resident at Erfurt; letters of Kinsky, and of Ilow and other officers who confederated at Pilsen in January, 1634, to support Wallenstein — contribute largely to our knowledge of the events which immediately preceded his final removal and assassination. The work closes with a reprint of testimony taken at the trial of the supporters and accomplices of the general.

The opinion expressed by the editor in his exceedingly well written introduction, wherein he has drawn upon the entire Wallenstein literature, is that previous to his first removal from command in 1630 the duke had no thought of treason. That was the turning point in his career. Then correspondence was opened between him and the Swedish king, but the victory of the Swedes at Breitenfeld rendered the aid which Wallenstein had already promised unnecessary, and negotiation ceased. After Lützen his main effort, as revealed by his occasional utterances, was to secure peace for Germany. Spain, the pope and Bavaria were recognized by him as the great obstacles in his way, and the hope which he seems to have cherished, of overcoming these without making the emperor his enemy, was vain. However, with the Protestant powers behind him he hoped, if it came to the worst, to coerce the emperor. But the confidence of these powers he was never able fully to gain. Arnim's trust in him was rudely shaken by his apparently inconsistent conduct in 1633. Wallenstein himself distrusted Arnim, while to him the Swedes, like the French, were only foreigners. Throughout his intrigues the duke took a deep interest in the plans of the Bohemian exiles for restoration to their country. They wanted to make him king, but it does not appear that the crown they had to offer had great attractions for him. The acceptance of it would have tended to defeat his larger plan. From the papers of the Duke of Saxe-Lauenburg and of the Polish officer Schlieff, light is thrown on the efforts

of Wallenstein to obtain help and to guard against attack during the last days of his life. But they were vain. He had attempted too much and had lost the confidence of all except a few officers and soldiers. When Bernhard of Weimar was asked for aid, he refused to believe that the duke had broken with the emperor, though the order for his arrest had already been issued.

If this view of Wallenstein's character be the true one, it was his assassination which removed the last obstacle to the continuance of the war. After that it must be prolonged till sheer exhaustion brought it to an end.

Dr. Meinardus in his work on the Brandenburg privy council, the first volume only of which has been issued, introduces the reader to another phase of German history during the Thirty Years' War. He proposes to print the minutes, reports and resolutions of the privy council during the years 1640 to 1688. The part now published extends to April, 1643, covering the last year of the life of George William and the beginning of the reign of the Great Elector. Brandenburg had been suffering from the policy of violent opposition to the Swedes which had followed the conclusion of the Peace of Prague. In that treaty she had followed the lead of Electoral Saxony and hoped thereby to rescue Pomerania from the bonds of the northern invaders. But in opposition to the desire of his council the elector declared the Swedes enemies, and at once Brandenburg was overrun by their troops. For years she suffered from their devastations, the elector being forced to take refuge in Prussia, and the defence of the electorate being intrusted to the favorite, Prince Schwarzenberg. Never, not even in the time of Napoleon, did the country suffer as it did then. But the important thing to notice here is that during these years the privy council was dissolved, its members were dismissed, and the government was conducted exclusively by the elector and Schwarzenberg. The latter, though a statesman of considerable ability and pursuing an intelligible policy, used his position for his own enrichment, and, with his master, set at defiance the wishes of all classes of the subjects. But when Frederick William came to the throne, a change of policy at once followed.

Schwarzenberg, though preparing to yield to the changes, was soon removed out of the young elector's way by death. As soon as possible military operations were brought to an end and negotiation, instead of war, was tried. The privy council was restored, and the men who were driven from power five years before were brought back. It was the policy of the Great Elector thenceforward regularly to consult his council, though he reserved to himself the right of independent decision. This was in no case allowed to the lieutenant of the elector in the latter's absence. The jurisdiction of the privy council extended to matters of internal administration, such as justice, the domains and ecclesiastical affairs, its scope depending largely upon the instructions of the elector. By 1642 the number of its members had been increased to eleven, and at their meetings votes might be reached either with or without debate. The influence of the council was sometimes merely formal, but usually it was real and actual. A certain degree of separation was maintained between the business of Prussia, that of the Mark and that of Cleves, the three components of the Hohenzollern possessions.

#### IV.

The works in this series which deal with more recent times fall naturally into two groups, the one bearing on the history of Hanover and Brunswick during the seventeenth and eighteenth centuries,<sup>1</sup> and the other treating of certain general phases of the history of the modern Prussian state.

The original material in the volumes on Hanover consists chiefly of the memoirs and correspondence of the Duchess Sophia, wife of Ernst August and mother of George I of

<sup>1</sup> Dr. Adolf Köcher, *Geschichte von Hannover und Braunschweig*, 1648 bis 1714. Erster Theil, 1648-1668. 1 vol. (No. xx of the series.)

Dr. Adolf Köcher, *Memoiren der Herzogin Sophie, nachmals Kurfürstin von Hannover*. Part of one vol. (No. iv of the series.)

Eduard Bodemann, *Briefwechsel der Herzogin Sophie von Hannover mit ihrem Bruder, dem Kurfürsten Karl Ludwig von der Pfalz, und des Letzteren mit seiner Schwägerin, der Pfalzgräfin Anna*. 1 vol. (No. xxvi of the series.)

Eduard Bodemann, *Briefe der Kurfürstin Sophie von Hannover an die Raugräfinnen und Raugrafen zu Pfalz*. 1 vol. (No. xxxvii of the series.)

England. They dwell on the private life of the duchess and on the family history of the German courts more than on the political events of the time. But they are, of course, an authority of the first importance for the history of the contract by which George William of Hanover signed away his territorial rights on behalf of the children of his younger brother and Sophia, thus bringing them ultimately into possession of the electorate. The correspondence of the Count Palatine Charles Louis with his sister-in-law reveals how the marriage between the count's daughter and the Duke of Orleans was brought about, which was an important step in the plan of Louis XIV for securing the Palatinate. In the letters of Charles Louis to his sister he dwells on the ravages committed by the French in the Palatinate during the war of 1672 to 1678. He was then able to see how little the forced conversion of his daughter to Catholicism, that she might obtain a lofty position at the French court, had availed him. The later correspondence of Sophia, then electress, with her nephew and niece of the Palatinate, contains the record of her feelings concerning the English succession as they developed from 1690 to her own death. In her youth she had been prominently mentioned among those upon whom the Prince of Wales, afterwards Charles II of England, might bestow his hand. Now, after the changes of half a century, the prospect was again presented to her of occupying the throne of that country. But even after the passage of the Act of Settlement in 1701 the opposition of Anne and the Tories to the Hanoverian succession made the outlook anything but encouraging. The wisdom of the electress is shown in her reserve. Her letters prove that, though she was the recognized heiress to the throne, she was content to let affairs take their course. She saw that it was better for her to remain in Germany than to visit England, that active urging of the Hanoverian claims could result in no advantage. In this course she persisted throughout, and hence the succession came peacefully, though she did not live to witness it. Both the correspondence and the memoirs based upon it show that Sophia of Hanover

was in her century one of the noblest representatives of German womanhood.

The group of works concerning Hanover will find their fitting culmination in the elaborate history of that principality by Dr. Köcher. He intends to cover in four volumes the period from the Peace of Westphalia to the accession of the Hanoverians to the English throne. Only the first volume has yet appeared, containing a minute review of the first two decades of the period. The material is drawn almost wholly from the archives and from published collections, and the text abounds in ample quotations from the original documents, while very important papers are printed in full. The aim of the author is to treat of the relations between Brunswick-Lüneburg and the neighboring states and principalities, rather than of its internal history. The material which he uses is for the most part new, and the work will fill a place left hitherto unoccupied. It supplements the well known histories of Prussia by enabling the student to view the events of the reign of the Great Elector from the standpoint of a rival principality. It carries one into the midst of the political relations of northwestern Germany. It shows how under a system of joint rule the heirs of the Brunswick estates learned to coöperate, and thus rose gradually from the condition of weakness in which they were left by the Thirty Years' War till they could bring into the field a well trained force of 30,000 men. The conversion of Duke John Frederick of Celle to Catholicism threatened for a time the harmony of the family, but the danger was soon removed by mediation and agreement. The house of Brunswick was strongly Protestant, and a leading aim of its policy was to secure the guarantees of Protestantism which were contained in the treaty of Westphalia. It was also particularistic, suspicious of Austria because of her intimate relations with Spain, and jealous of the "freedom" of the imperial estates. It shared fully in the spirit of opposition shown by the princes toward the electors, this being one reason for the jealousy of the Brunswick family toward Brandenburg. A policy growing out of such elements as these must seek its support in alliances

and leagues, manifold, temporary, rapidly changing. The history of these in their succession forms the staple of the volume before us. Brunswick first sought to confirm the Protestant guarantees, and its own position as a principality, through the League of Hildesheim, of which Sweden was a prominent member. But Sweden was trying to gain full possession of the city of Bremen, and to become its representative in the imperial diet. This offence against a German state forced Brunswick into alliance with the Great Elector. When Brandenburg soon after through Prussian complications became involved in war with Sweden, Brunswick sought protection in the *Rheinbund*, through which France was endeavoring to gain a controlling influence in German politics. But its Protestantism and its opposition to Sweden and to the Bishop of Münster brought the duchy into alliance with the Dutch Republic, and this soon developed into the fourfold alliance of the States General, Brunswick, Brandenburg and Denmark. The military operations in the Netherlands and the defence of Bremen helped to raise and train the army to which reference has been made. The *Rheinbund* collapsed, and when, toward 1670, Louis XIV began seriously to threaten the German and Protestant powers along the Rhine, Brunswick was ready to bear her part in their defence. With these renewed efforts to uphold the treaty of Westphalia the volume closes.

Lack of space prevents more than a passing reference to the volumes containing the lists of the names and places of residence of the students who matriculated in the University of Frankfurt on the Oder throughout its entire history.<sup>1</sup> It takes its place among similar publications of the kind, which will be of great use not only to the genealogist, but to students of social history.

Taking up the numbers bearing more on later Prussian history,<sup>2</sup> we find that Lehmann's *Prussia and the Catholic Church*

<sup>1</sup> Dr. Ernst Friedländer, *Aeltere Universitäts-Matrikeln*: 1. Universität Frankfurt a. O., von 1506 bis 1811. 3 vols. (Nos. xxxii, xxxvi, xlix of the series.)

<sup>2</sup> Max Lehmann, *Preussen und die Katholische Kirche seit 1640*. 5 vols. (Nos. i, x, xiii, xviii and xxiv of the series.)

Dr. Rudolph Stadelmann, *Preussens Könige in ihrer Thätigkeit für die Landes-*

contains the largest collection of documents in the series. They come very largely from the state archives at Berlin, and constitute a very full documentary history of the policy of Brandenburg-Prussia toward the religious confessions represented within its territories during the period between the accession of the Great Elector and the death of Frederick the Great. The material here presented, with the introductory chapters which sum up the development previous to 1740, shows that from the earliest times the Electors of Brandenburg were supreme in church, as well as in state. That facilitated for them the work of reformation. But when in course of time they obtained Prussia and Cleve-Mark, and when John Sigismund became a Calvinist, though the majority of his subjects remained Lutherans, the ecclesiastical problem became very complicated. Brandenburg was Lutheran, but tolerant; Prussia was strongly Lutheran and extremely intolerant; in Cleves and the other western possessions the Catholic, the Lutheran and the Reformed parties existed side by side with most complicated relations, made still more intricate by foreign interference and by the fact that the Catholic family of Pfalz-Neuburg was now joint ruler of these territories with the Hohenzollerns. Brandenburg-Prussia was at this time a loose aggregation of provinces, possessing scarcely the germ of state unity. Under such conditions a rigid state-church system like that of England could not be maintained. The largest possible toleration which was consistent with the maintenance of governmental control over the confessions must be granted. This was the policy adopted by the Great Elector and followed by his successors.

cultur. 4 vols., Frederick William I, Frederick II, Frederick William II, Frederick William III. (Nos. ii, xi, xxv and xxx of the series.)

Max Posner, *Frederic II, Histoire de Mon Temps* (Redaction von 1746). Part of one vol. (No. iv of the series.)

Reinhold Koser, *Unterhaltungen mit Friedrich dem Grossen. Memorien und Tagebücher von Heinrich de Catt.* 1 vol. (No. xxii of the series.)

Paul Baillen, *Preussen und Frankreich von 1795 bis 1807. Diplomatische Correspondenzen.* 2 vols. (Nos. viii and xxix of the series.)

Dr. Ritter v. Poschinger, *Preussen im Bundestag, 1851 bis 1859. Documente der k. Preuss. Bundestags-Gesandtschaft.* 4 vols. (Nos. xii, xiv, xv and xxiii of the series.)

The author compares his attitude toward the sects to that of Cromwell, both seeking the broadest practicable toleration. He also infers that the elector imbibed many of his ideas on this point during his early residence in the Netherlands. In Brandenburg he was able to grant the utmost freedom of worship for Catholics as well as Protestants. In Cleve-Mark he soon abandoned the specifications of the treaty of Westphalia and sought by special agreement with the palsgrave to secure peace on tolerable conditions for all parties (the Recess of 1672). In Prussia a similar result was obtained for the Catholics by a treaty with Poland. Arians, Socinians, Jews were freely admitted into the margraviate, while it was a general principle that the civil rights of none should be diminished because of their religion. The assumption of the crown by Frederick I strengthened the bond of union between the provinces, and thus made it easier to uphold the royal ecclesiastical supremacy. Documents showing the opposition of the papacy to this act are printed in this work, besides the correspondence of Vota and Wolff, two Jesuits who were deeply interested in the negotiations concerning the Prussian crown. During the reign of Frederick William I the acquisition of Guelders and Lingen added to the number of Catholics in the kingdom, while the conquest of Silesia by Frederick II increased them eightfold. This made the problem of government more difficult, but the adoption of eighteenth century philosophy by the young king insured the continuance of toleration, while his lofty ideas concerning the state prevented him from abandoning its rightful supremacy.

Corresponding in importance to the work just noticed are the four volumes of Stadelmann, which unfold the economic policy of the Prussian kings, from Frederick William I to Frederick William III. The materials for these also have been drawn from the archives at Berlin, and consist for the most part of the administrative orders and instructions of the kings themselves. In them may be seen the tireless activity especially of Frederick William I and Frederick the Great, and their almost herculean efforts to increase the resources of



their kingdom. It was destitute of natural advantages. Its population was sparse, and of its peasantry the larger part were serfs. But the kings possessed unlimited power and they used it to the full in the promotion and control of enterprises for the public good. No better instance of paternalism can be found in history, and it is difficult to see how without it Prussia could have survived the ordeal of the Seven Years' War. Her society was almost exclusively agricultural, and hence could bear this policy better than an industrial community.

Economically, as in most other respects, the central provinces of the electorate had to be resurrected after the close of the Thirty Years' War. The Great Elector led in this work, and here again set the example for later times. He issued ordinances for the building and repair of cottages, for the draining of land, for improvements in the care of land and of stock, for the promotion of tree and garden culture, for the regulation of the royal domains, for encouraging the immigration of Huguenots after the revocation of the Edict of Nantes. He sought to promote in all possible ways the prosperity of the country, that it might recover as soon as possible from its exhaustion and be able to bear the new burdens imposed upon it. But in the work of internal administration in this department the Great Elector was surpassed by Frederick William I. He in this respect was the greatest of the Prussian kings, his son simply following in his steps and building diligently on the foundations already laid. Stadelmann's work, like the studies of Schmoller, reveals the king colonizing Salzburgers and other exiles in the kingdom, so that during his reign from this source alone its population is supposed to have been increased by 600,000; bringing waste and submerged lands under cultivation; reorganizing the administration of the domains by changing the form of lease and instituting the *General-Directorium* largely for this purpose; improving the system of taxation; changing serfdom into hereditary dependence; building and repairing roads and making rivers navigable; building magazines for the storing of agricultural products, improving seed, stock and agricultural implements, and promoting the cultivation

of various products ; introducing in the eastern provinces the German methods of agriculture, sending thither trained farmers and establishing model farms ; building churches and schools throughout the country and introducing compulsory school attendance ; establishing at the universities (Halle and Frankfurt) two professorships, one of agricultural economy and the other of cameralistic science. It was upon East Prussia, lately visited by war and pestilence, that Frederick William expended his most systematic efforts, and there the best results of his work were revealed. But his hand was felt everywhere, in affairs the most minute as well as in large concerns. He could by a cabinet order instruct his subjects how to bind their grain, or what lambs they should kill, as well as encourage home industry by forbidding the exportation of wool and the importation of woollen manufactures. He was constantly watching his officials and investigating their conduct. He personally examined everything, and the numerous comments written by his own hand on the margins of reports show how searching was his scrutiny. It was the king's devotion to this work and the noble results which came from it, which aroused the admiration of the young Frederick, and in part led to the reconciliation between him and his father. As crown-prince Frederick was subjected to thorough training in the administration of the domains, and so was prepared to carry on the work with the greatest energy along the lines marked out by his father. Dr. Stadelmann has treated this side of the great king's career fully and in a very interesting manner. He has also carried his investigations through the next two reigns, describing the reforms of Stein and Hardenberg and the consequent change of the economic system of Prussia into its modern form.

In the *Histoire de Mon Temps* and the *Memoirs of de Catt* other sides of Frederick's character are brought into view. The version of his *History* here presented is that written immediately after the peace of Dresden and covering the first and second Silesian wars. It was carefully revised in 1775, when the *Memoirs* were issued in their final form. The editor

in his notes has compared the two versions and noted the changes which were introduced in the second. He has also collated the passages from the correspondence and other writings of Frederick in which statements were made concerning persons or events mentioned in the text, the purpose being to show whether the judgments of the writer changed in any degree with the lapse of time. In the present work Frederick always speaks of himself in the first person; in the revision of 1775 he adopted throughout, like Cæsar, the impersonal style. In many cases also his judgments are softened and broadened, and the production assumes a more dignified historical tone. But the version now first critically edited will be of equal value to the investigator, because it gives the author's first impressions, before the feelings aroused by the events had cooled.

When we open the *Memoirs of de Catt*, we turn from Frederick the historian, who was seeking by all means to hand down to posterity a correct account of his deeds, to Frederick seeking relaxation from the burdens of war in conversation, literary criticism, the writing of sonnets, and in discussions about the future state. When journeying on the Rhine in disguise in 1755, the king met Heinrich de Catt, a man of Swiss birth, who had studied the humanities at Utrecht, was a brilliant conversationist and well versed in the ways of the world. Three years later Frederick, then in the midst of the Seven Years' War, invited de Catt to take up his residence with him as *Vorleser*, i.e. a sort of private secretary. The offer was accepted, and de Catt remained with the king till 1780. But his duties were more social and literary than official in character. He was well acquainted with French literature, was something of a critic, and possessed almost unfailing tact, and it was for the relaxation which intercourse with him afforded that he was kept in camp and at court. De Catt was with the king almost daily during the weary campaigns of 1758 and 1759, and claims that in his *Tagebücher* (printed in Dr. Koser's volume) he set down brief notes of the conversations he had with Frederick as soon as possible after they occurred. In later years these

were expanded into the *Memoirs*, which, with the *Tagebücher*, are now for the first time published. The picture of the king presented in these is most attractive, and in its outlines is undoubtedly true. In these, the darkest years of his life, Frederick showed himself a hero in endurance, as well as in achievement. His large endowment of humor and the diversion which his cultivated literary taste furnished, combined with the consciousness that he was suffering in his people's cause, enabled him to look ruin in the face for three years without flinching. The *Memoirs* show clearly how it was done, though the editor has proved that in details they are very untrustworthy. De Catt has contrived throughout to give himself an undue prominence. He has padded his accounts of campaigns and battles with statements taken from military histories. He has probably brought together into his account rumors and incidents from a great variety of sources. It is impossible to suppose that he could reproduce the language of the king, as he claims to do throughout. Statements which are based on the *Tagebücher* of course have greater credibility than those which are not, and the editor in his notes refers to all the passages in which the two works agree.

The last work in the series to which reference will here be made — for Dr. Poschinger's *Preussen im Bundestag* is already too well known in this country to need description — is Bailien's *Preussen und Frankreich*. By the peace of Basel (1795) Prussia withdrew from the first coalition against France and adopted a policy of neutrality. Relying on the reputation her arms had won under Frederick the Great, she sought to mediate between the powers in the interest of peace. This could be done, with any prospect of success whatever, only by a state of the first rank, and Prussia by no means held such a position. The abandonment of Austria, which was occasioned by the traditional jealousy of the two states, resulted in the complete isolation of Prussia. Her influence throughout Europe was destroyed and she was forced to yield to one French demand after another. The record of this decline may be read in the documents here collected from the Prussian and

French archives and published. No sooner was the line of demarcation established under the treaty of Basel than it was crossed by the contending forces. Then Caillard was sent by the French to Berlin to negotiate a treaty of alliance, and Sandoz-Rollin was sent by Frederick William II to Paris to save, if possible, the provinces west of the Rhine. The dispatches of both these ambassadors are printed in this work and contain valuable accounts of the political development at the capitals where they were resident. Sandoz-Rollin was unsuccessful and the western provinces had to be abandoned; Caillard concluded a treaty in 1796 in which the neutrality of northern Germany was recognized by France. This was in harmony with the views of Haugwitz, the Prussian minister. But the efforts of the French to secure a treaty of alliance were at this period doomed to failure. Caillard labored for it long and enthusiastically, but had to yield to Siéyès, who soon declared that Prussia must be removed beyond the Elbe and France seek her allies among the small German states. This was a correct foreshadowing of ultimate results, and the fact that Siéyès held the view so firmly totally unfitted him for the work of pacification at Berlin. But Talleyrand did not show this spirit and the French government could not yet afford to drive Prussia into the coalition. Therefore negotiations were somewhat aimlessly continued till the First Consul took them in hand. Their course may be followed in detail in the first of these volumes.

In October 1800 the Marquis Lucchesini was sent by the Berlin government to Paris, where he remained till the outbreak of war in 1806. His dispatches, with the replies and instructions which they elicited, occupy the larger part of the second volume. The occasion of Lucchesini's mission was the prospect of peace (Lünéville) and the reëstablishment of friendly relations between France and Russia and Austria. The ambassador was instructed to watch the development of internal affairs, as well as the whole field of foreign relations so far as they affected Prussia. He had frequent interviews with both Napoleon and Talleyrand, and his dispatches contain important

information concerning the manner and views of both, as revealed during negotiation. He had to take up again the question of the compensation which Prussia should receive in return for the cession of the territory on the left bank of the Rhine. After urging one proposition after another and seeing them modified or rejected by France, he was finally forced to accept certain districts on the Ems in Westphalia, much smaller in extent and population than Prussia had been led to expect (May, 1802). During these negotiations Lucchesini saw and reported the contempt with which Napoleon regarded Prussia. Count Haugwitz, perceiving the character of the First Consul, began in a series of memorials printed in this volume to urge a more vigorous policy against him, though without abandoning the idea of neutrality.

The intentions of the French were revealed with startling clearness by the occupation of Hanover in 1803. The possibility of this had already been discussed, but the conclusion of the peace of Amiens had for a time removed the plan into the background. Haugwitz protested strongly against the measure and recommended the armed occupation of Hanover by Prussia; but this the king regarded as dangerous, and the French were allowed to enter the electorate without opposition. Soon afterward the plan of seizing Bremen and Hamburg and stopping English trade on the Weser and Elbe was revealed. Later Rumbold was seized. Thus the French advanced from one encroachment to another, showing how little regard they had for the Prussian system of neutrality. For a time, however, it was thought that only England would be involved in the war. That was the report which Lombard, the statesman who was supplanting Haugwitz in the king's confidence, brought back from Brussels, whither he was sent in 1803 to negotiate with Napoleon concerning Hanover. But as the months passed a breach with Austria and Russia became more and more certain. If it occurred, the maintenance of Prussian neutrality would become impossible. Hence mediation between Russia and France was tried, but in vain. It was only in October, 1805, after French troops had marched through Ans-

bach, neutral Prussian territory, that Frederick William began to adopt measures of defence. But then, so great seemed the necessity for peace that it was temporarily secured under the form of an alliance with France, concluded just after the battle of Austerlitz (treaty of Schönbrunn), which in its final form necessitated not only the cession of territory, but the closing of Prussian ports against England. Prussia considered herself fortunate to obtain in return possession of Hanover. But with the encroachments of Murat, the new Duke of Cleves, the alleged intention of Napoleon to restore Hanover to England, the formation of the Confederation of the Rhine, the massing of French troops in western Germany, it appeared that the troubles of Prussia had just begun. The system of neutrality had long since collapsed, the immediate prospect of war had now be faced. The documents at the close of the second volume relate to the alarm preceding the outbreak of hostilities, and to some events connected with the war itself and with the French occupation till the peace of Tilsit.

Even so cursory a review of the *Publications from the Prussian Archives* as it has been possible to give in these pages reveals the great importance of the series. Though the work of preparing and issuing it has been in progress less than twenty years, it has already reached dimensions which entitle it to a place among the great series of *Quellen* published by the learned societies and institutions of Europe. In a great scientific field it is a monument of systematic and well directed effort properly supported by the state. It shows that Prussia is as careful to hand down to posterity a correct account of its history as was Frederick II, the greatest of her founders, when he wrote his memoirs and subjected them to minute and frequent revision. The volumes already issued relate to the most important periods of the country's history, and the wealth of their contents betokens a rich harvest still to come.

HERBERT L. OSGOOD.

## A NEW CONTRIBUTION TO ECONOMIC HISTORY.<sup>1</sup>

AN eminent historian in the English Cambridge once penned, in the course of an effective protest against the *belles-lettristic* treatment of his subject, a solemn warning about interesting books. "It is not generally by fascinating books that the scientific knowledge of the world is advanced."<sup>2</sup> But the new professor at Harvard has succeeded in showing that it is possible to make the results of thorough and careful study "fascinating." While most discriminating in the use of evidence, he has yet the knack of introducing concrete instances and illustrating his subject by useful analogies; he has been able to carry his readers along wonderfully, and to give a vivid interest to the discussion of difficult technicalities. Dullness is not a necessary concomitant of learning. The condemnation of the *belles-lettres* writers of history lay in the fact that they were not careful to show the justification for each step in the development of the story. A history which merely states the writer's opinions in regard to the past may be true or false; but whether true or not, it is always worthless to the student, if he has no means of examining the data on which it rests, and correcting or confirming the conclusions it contains. A work like the present, which puts in clear light the results of genuine research, is a real addition to scientific knowledge, not only because it gives an exposition of conclusions actually established, but because it affords a firm basis for pushing investigation farther.

Some portions of this volume have already seen the light, but Professor Ashley was well advised in re-issuing them now, with the valuable fresh matter which he has been able to add, instead of waiting to complete his work on all sides. The exigencies of limited time and changes of place have prevented him from attempting to picture the industrial and social conditions of each successive age in order, or from dealing systematically with the relations and inter-connections between economic and political life. The subject of the foreign trade of the country is deliberately omitted; Columbus

<sup>1</sup> An Introduction to English Economic History and Theory. By W. J. Ashley. Vol. I, Part II (in the American edition, Vol. II): The End of the Middle Ages. London, Longmans, Green & Co.; New York, G. P. Putnam's Sons, 1893.—xi, 501 pp.

<sup>2</sup> Prof. Seeley, in *Macmillan's Magazine*, XIV, 295.



and Cabot, with the age of discovery, are ignored; governmental action, whether in directing lines of policy or imposing taxes, is scarcely alluded to. Since such important groups of facts are passed by, it might be said that the volume is not exactly a history, but rather a collection of historical essays. But this phrase is used advisedly, to indicate the range and scope of the work, not its quality. The word essay has been unduly degraded in recent years; but the term which has been chosen to designate their work by Petty and Malthus and Vinogradoff will always have honorable associations for students of economic history.

Professor Ashley has separated out the most important sides of industrial life, and followed out with great clearness their development during three centuries. Drawbacks are to be found in connection with any order of treatment, and Professor Ashley has no immunity from the common lot. Three hundred years is a long time; there is room for a great deal of change, and in reading about such a long period as a whole, it is not always easy to fix with precision what special date is intended. Professor Ashley has recognized this source of confusion (page 98), but he has not sufficiently guarded against it. For instance we read:

In earlier centuries the merchant gild had stood above all the craft gilds, and had exercised or claimed jurisdiction over them. But now, owing to a concurrence of forces, the merchants of the town had come to be themselves grouped in associations, which stood not above, but alongside of, the purely artisan bodies. [Page 24.]

But what case can be specified of a merchant gild claiming "jurisdiction" over craft gilds in centuries earlier than the fourteenth? It obviously is not true of London; of what English town is it true? What epoch in these three centuries is denoted by the word "now"? How much gradual change and of what varied sorts is glozed over by the phrase "a concurrence of forces"!

To take another case, it is rather bewildering to read that

the economic activity of the early middle ages was an almost exclusively agricultural one. . . . Then there slowly arose a merchant class; at first, it would seem, merely to meet the needs of the wealthy and more luxurious, and then to transport from place to place a local superfluity of such raw produce as corn or wool. But with the appearance of craft gilds we see, for the first time, a body of men with whom manufacture was not a by-employment. [Page 99.]

As we find weavers' gilds in the twelfth century, how far back are we to look for the slow growth of the merchant class? Indeed

what proof is there that there ever was in any English town during the early middle ages such a merchant class, as distinct from craftsmen or shipmen who traded? From the language he uses about this supposed merchant class (page 209) and the earlier craft guilds, it would almost seem that Professor Ashley has not taken sufficient account of the researches of Dr. Gross. But this point, as well as his persistent denial of an important artisan immigration from the continent in Norman times, belongs more properly to the subject of his earlier volume, and need not be discussed in any detail here.

The want of precision, of which complaint has been made, gives rise to a difficulty of another kind. Three hundred years allows time for a town to rise and flourish and decay; and when the period is taken as a whole, there is danger of not sufficiently accentuating the fluctuations which occurred within it. Professor Ashley recognizes the decay of municipalities, as authorities for directing and regulating industrial life, but he declines to believe in the general decay of their material prosperity in early Tudor times (page 50). This is the more surprising as he himself admits elsewhere that the older towns were in economic difficulties from the competition of the new domestic manufactures (page 235). Such decay is probable enough; and there was at least a widely spread opinion in Tudor times that towns were decaying. It seems to be a gratuitous exercise of ingenuity to try and explain away a part of the evidence on the subject.

But to turn to more important matters. On one interesting topic, to which I have already alluded elsewhere,<sup>1</sup> Professor Ashley has collected an immense amount of interesting information. The survivals of communal economic life are treated in considerable detail; several instances of the continuance of town bargaining are adduced,<sup>2</sup> and the whole account of the town granaries<sup>3</sup> is fresh and full of interest.

Professor Ashley has devoted but a small amount of space to rural life; but his map of the enclosures in the fifteenth and sixteenth centuries is a painstaking attempt to make a first approximation to the solution of a difficult problem. No one can hope yet awhile to say the last word on any such point in economic history; but he has done well to put on record in this convenient form the results he has reached from the sources available to him; it will be for himself and others to fill up details and to render the whole more

<sup>1</sup> *Quarterly Journal of Economics*, V, 343.

<sup>2</sup> Page 39.

<sup>3</sup> Page 34.

accurate. The discrimination he has exercised becomes apparent in the hesitation he expresses about placing Northamptonshire among the enclosed counties, despite the explicit evidence of W. S. in the well-known *Dialogue*. This hesitation is fully justified; since it appears from Miss Lamond's edition<sup>1</sup> that Devonshire, not Northamptonshire, is the right reading in the *Dialogue*. It is also shown by a paper in the British Museum that Northamptonshire was regarded as a typical unenclosed county in 1607.<sup>2</sup> The soundness of Professor Ashley's judgment is thus confirmed by independent evidence. On the other hand, it may be doubted whether the assumption, that land which was open field in the eighteenth century had never been enclosed, is justified. It does not seem clear, because Arthur Young found some district in common fields, that these had never been enclosed and thrown back again into the old condition. Were none of the riots against enclosure successful, not even those of 1549? The case of Warwickshire seems to be in point; the south-east of the county was unenclosed in the time of Leland; it is equally certain that the enclosing of this very district had been proceeding rapidly in 1459. John Ross complains of the new dangers on the road between Warwick and London, and specifies many villages in this part of the shire which had suffered severely by the progress of sheep-farming, and from which the villains had been evicted.<sup>3</sup> In connection with this it is also noticeable that Professor Ashley seems to regard 1470 as the beginning of the movement (page 286); but John Ross certainly gives the impression that it had been going on for some time even in his day. The earliest case of riot in connection with Warwickshire enclosures that I have noticed was in 1374, when "the commons of Coventry rose, and cast loaves at the mayor's head, and cast open that which the mayor had enclosed."<sup>4</sup> This is not precisely relevant, perhaps, as it does not appear to have been a case of the eviction of villains. But it at least serves to show that sporadic enclosure was found profitable a century before the time when, according to Professor Ashley, the movement became general and rapid.

<sup>1</sup> A Discourse of the Commonweal of thys Realme of England, first printed in 1581, and commonly attributed to W. S.; edited from the MSS. by E. Lamond (Cambridge, 1893), p. 49, l. 13.

<sup>2</sup> Tit. F. IV, f. 319.

<sup>3</sup> *Historia Regum Angliæ*, p. 122.

<sup>4</sup> Wanley's Collections. British Museum. Harl. MSS., 6388.

There is also some difficulty about the date he fixes for the close of the period of rapid enclosures; he puts it at 1530. But surely the dissolution of the monasteries and the influence of the new nobility tended to accelerate rather than to check the progress of enclosure. The whole story of John Hales and the commission of 1548 seems to show that the work of enclosure, accompanied by depopulation, was going forward rapidly; indeed Professor Ashley's own language lends some confirmation to this view. "The transference of the monastery lands to private owners increased very largely the area troubled by these agrarian changes." Had the church lands remained in ecclesiastical hands, "the transition would probably have been more gradual and less ruthless" (page 317). But if this is so, why is the time of rapid change placed so early? Was it really over before this ruthless and widespread transition began? Here as elsewhere the treatment of the same topic in different parts of the volume does not seem to be quite self-consistent.

The most important subject in regard to which Professor Ashley has not only supplemented but corrected the work of other writers (including myself) is the confiscation of gild property under Edward VI. He shows that the act of Parliament was much more discriminating than is usually stated, and that its scope was carefully confined to the property devoted, either temporarily or permanently, to religious objects; though he does not examine the cases of the "concealed lands" of the Grocers and other London companies,<sup>1</sup> he shows that in some other instances an honest attempt was made to carry out the measure without going beyond the limits to which it was confined. Whatever the actual results may have been, it is no longer possible to describe the enactment as a sweeping measure of confiscation.

But there is another problem of which the solution is not so plain. Professor Ashley seems to suppose that if their property was not illegally confiscated, the authority of the guilds and companies was also preserved. This is the question which seems to me of primary importance; did these guilds and companies survive as recognized authorities, with coercive powers for the regulation of industry? That similar authority was subsequently called into being by parliamentary or royal action is obvious. But is there any proof that the coercive authority of the old companies continued to be exercised after the Combination Act of Edward VI? Even in a city like York, where the action of the companies seems to be unbroken, there is evidence to show that though apparently continuous, it had assumed

<sup>1</sup> Strypes, *Stow's Annals*, book v, p. 233.

an entirely new character in 1519, and that the companies merely played the part of informers, while the authority was directly exercised by the mayor.<sup>1</sup> The really important question is not as to the continued existence of certain bodies as holders of property or as amateur dramatic clubs, — for this is clear enough, — but as to their continuance as industrial authorities. Professor Ashley fails to pay sufficient attention to the very important distinction between the different sources from which the authority to exercise regular control over industry was derived. Had he examined it, he could hardly have referred to Adam Smith in the way he does: the corporations which the *Wealth of Nations* condemns were companies like the Sheffield Cutlers, who exercised powers conferred by Parliament; Adam Smith was inclined to take a more favorable view of the corporations in Scotland,<sup>2</sup> which were municipal in character, and therefore were true, though imperfect, analogues of pre-Reformation craft guilds in England.

In an earlier chapter, indeed, it appears to me that Professor Ashley has strained the analogy between the industrial institutions in English and in Scotch towns (page 72). The "trades" of the latter were much more closely allied to continental than to English usage, at any rate after the Scottish war of independence. But his treatment of the condition of the poor is an excellent example of the successful use of the comparative method; this is far less likely to mislead when it is used to fill out a description, than when appeal is made to it to supply an explanation. The condition of the poor in England before the Reformation period has hitherto been very obscure, and the side lights which are thrown upon it from the researches of continental historians are of very great value. As ecclesiastical institutions and charity were similar in all parts of Latin Christendom, there is every probability that the same usages would be adopted in dealing with similar social problems; and this view is confirmed by the isolated information drawn from English sources. The chapter is quite admirable.

The last chapter also, on "The Canonist Doctrine," is deserving of the highest praise. Those who recognize that thought and sen-

<sup>1</sup> It is agreed that the searchers of no occupation within this city, suburbs and liberties of the same shall have the correction and punishment of the defaults done and commenced concerning all the said occupations or any of them, but that the same defaults hereafter shall be punished and redressed only by the mayor for the time being and his brethren, and half of the forfeiture of the said defaults shall remain to the weal of the said city, and the other half to such occupation as the case shall require. — Drake, *Eboracum*, p. 215.

<sup>2</sup> *Wealth of Nations*, Nicholson's edition, p. 51.

timent are the most powerful of all economic forces, will not regard the space allotted to this discussion disproportionate, even though the direct consequences of the changes of opinion were not immediately apparent. Professor Ashley's account of the matter is clear and sympathetic; it will surely be less possible for modern theorists of reputation to brush aside with ignorant contempt the distinctions drawn in the middle ages.<sup>1</sup> Even those who have devoted some little attention to the subject will find much that is fresh and interesting in Professor Ashley's chapter, especially in his account of Eck, Major and the Romanist divines of the sixteenth century.

These two chapters are among the best in a book that is excellent, though somewhat unmethodical, throughout; and there are passages which show that Professor Ashley has a clear view of the importance of history, and its relation to other branches of economic study; there is an underlying system. We hear nothing of universal "laws," but only of useful generalisations of more or less importance (page 262). Again in regard to the statement that capital is an historical category, we read these excellent remarks:

What is true of "capital" (not as economists have understood it, but as the world uses the term) is equally true of the great jural conceptions of "property," "inheritance" and the like. These are not logical abstractions, but the varying expressions in thought of varying usages in social life. There is no abstract right of property, but there have been at various times varying rights of property; and similarly, there is no eternal stamp upon things which makes them capital, but merely varying means attached to the possession of wealth for the acquisition of further wealth. [Page 434.]

The standpoint from which he writes is definite, and his mode of investigation is fruitful; in the freer atmosphere of the New World he can even allow himself the luxury of bestowing good advice on fellow-workers who are forced to engage in controversies on method.<sup>2</sup> But it is surely permissible to ask why we should not apply to the study of present day phenomena, the same principles of careful observation and limited generalisation that are so instructive for the affairs of bye-gone times? So long as practical influences exclude those who devote themselves to political economy as an empirical science from taking any part in teaching or writing on modern affairs, the controversy about method is likely to continue. If such students are to be forced into silence, they will certainly ask the reason why.

W. CUNNINGHAM.

<sup>1</sup> Böhm-Bawerk, *Capital and Interest*, page 24.

<sup>2</sup> Preface, page xi; compare also *Quarterly Journal of Economics*, VII, 123.

## REVIEWS.

*Division and Reunion, 1829-1889.* By WOODROW WILSON.  
[Epochs of American History.] New York and London, Longmans, Green & Co., 1893. — 12mo, xix, 326 pp., five maps.

As a rule the writing of an abridged history is a very difficult and almost thankless task. In the little volume before us Professor Wilson aims to give "a sketch in broad outline," "a rapid synopsis . . . of the larger features of public affairs" during the seventy years, 1829-1889. He has endeavored to write a brief but systematic narrative that would interest the general reader, instruct and direct the student and aid the teacher. A carefully selected list of about fifty books of reference is given at the beginning, and at the head of each of the five parts into which the work is divided, extensive references are furnished under the subdivisions of "bibliographies," "historical maps," "general accounts," "special histories" and "contemporary accounts." The five historical maps that accompany the volume are so clear and instructive as to make the work valuable to every one who takes any interest in United States history. The classifications, the grouping of subjects and the titles of chapters and sections are peculiarly clever and helpful.

The author has given the first third of his volume to the treatment of the period which was under the direct influence of General Jackson. Professor Wilson's insight into the tendencies of the times, the impulses of Jackson's nature, and into the effect which both had upon the contemporary political life, and especially the vivid manner in which all are characterized, indicate historical talent of an extraordinary quality. It is not so much in any originality of idea as in his frequently brilliant precision of expression. No one has ever said so much about this epoch in so few words as is expressed in the following sentences, taken almost at random:

He [Jackson] impersonated the agencies which were to nationalize the government. Those agencies may be summarily indicated in two words, "the West." They were agencies of ardor and muscle, without sensibility or caution. [Page 25.]

Jackson's election was the people's revolution; and he brought the people to Washington with him. [Page 27.]

Jackson certainly embodied the spirit of the new democratic doctrines. His presidency was a time of riot and of industrial revolt, of brawling

turbulence in many quarters, and of disregard for law; and it has been said that the mob took its cue from the example of arbitrary temperament set it by the president. [Page 115.]

It is with all the more regret, therefore, that we find the author compelled to crowd the last fifty years of his whole period into the procrustean measure of two hundred pages. At times he shows evidence of being ill at ease under his limitation; and the narrative in places becomes dogmatic, indistinct or abridged into inaccuracies. It will not suffice, with historical scholars, to assume that every threat of secession prior to Nullification was a sober exposition of the general interpretation of the constitution at the time. Nor will the average reader think the historian very clear and consistent in these sentences:

The ground which Webster took, in short, was new ground; that which Hayne occupied, old ground. . . . The right upon which Hayne insisted, indeed, was not the right of his state to secede from the Union, but the singular right to declare a law of the United States null and void by act of her own legislature and remain in the Union while denying the validity of its statutes. There were many public men, even in South Carolina, who held such claims to be ridiculous. [Page 47.]

The author's reasoning on the subject of the sectionalization of the Union is nothing less than amazing. Taking von Holst's striking sentence: "The Union was not broken up because sectional parties had been formed, but sectional parties were formed because the Union had actually become sectionalized," he proceeds:

There had been nothing active on the part of the South in this progress. She had stood still while the rest of the country had undergone profound changes; and, standing still, she retained the old principles which had once been universal. [Page 212.]

The startling ellipsis here both of thought and of fact is probably due to the author's making a generalization while bearing in mind merely the economic conditions of the two sections; for surely no scholar would venture to make deliberately the assertion that there was no change in the principles on which the South acted in 1820, 1850 and 1861. In fact, because the economic development of the South was no match for that of the North, she had to enlarge her political principles almost in exact proportion to Northern economic superiority.

There are many indications that the volume was written with a view to brilliancy in style and arrangement rather than to a com-



plete mastery and sober presentation of all the facts. The author's statement (page 112) that by 1837 no Northern states except Connecticut, New Jersey and Ohio retained any property restriction upon manhood suffrage, overlooks the fact that the New York constitution of 1821 and 1846 disfranchised all men of color not possessed of a freehold estate of the value of \$250. A less excusable error is the assertion that the Peace Congress of 1861 was "made up of delegates from all but the seceding states" (page 214); whereas neither Michigan, Wisconsin, Minnesota, California nor Oregon was represented there. We are also told that the processes of presidential reconstruction were complete in the autumn of 1865 "in every state except Texas" (page 259). The author might have learned from Johnson's message of December 18, 1865 (McPherson, *Reconstruction*, p. 67) that Florida also was still in a transition state.

Notwithstanding these and other mistakes, and in spite of an overwrought style and many almost bewildering refinements of adjectives and phrases, it is impossible to criticise the little volume without reluctance. The sincerity and uncommon ability which Professor Wilson shows are worthy a much more elaborate work. In fact, it seems to me that only in such an undertaking will he be able to do his talent full justice and perform his entire duty toward American history.

FREDERIC BANCROFT.

*History of the English Parliament, together with an account of the Parliaments of Scotland and Ireland.* By G. BARNETT SMITH. London, Ward, Lock, Bowden & Co., 1892.—Two volumes, 1167 pp.

The author states that his is the first full and consecutive history of Parliament as a legislative institution from the earliest times to the present day. Many years have been occupied in collecting the material and writing the book. It was the plan of the author to give in foot-notes a complete list of the references upon which his various statements are based. But to do this, we are told, would occupy as much space as the text of the book. That is, there would have been four volumes instead of two. As published, little space is occupied with foot-notes. A chapter is devoted to the history of the parliament of Scotland, and another to the Irish legislature. Fac-similes of various documents appear in the book, such as the writ of Edward I directing the sheriffs of London to return two

members to Parliament, and the return of the assessor showing John Hampden and others as delinquents in the payment of ship money. The appendix contains *Magna Carta* and other documents.

Notwithstanding the author's statement that his book does not enter into comparison with the standard constitutional histories, the reader is sure constantly to make such comparisons. If the book had borne the name *Constitutional History* instead of *History of Parliament*, the reader would have detected little that was inconsistent with the title till he reached the account of legislation in the time of Victoria; and for the Victorian era there is not given a history of Parliament as a legislative body, but instead there is an account of the acts of Parliament classified under various heads. It is a constitutional history from a Parliamentary standpoint. Parliament is made prominent throughout, but there is no apparent effort to confine the narrative to the legislative functions of that body. Much care is taken to give a complete account of its judicial functions and to set forth its relations to the courts of law, while a large proportion of the space is devoted to a discussion of its relations to the king and the ministry. This is not a fault of the book. It is simply a fact growing out of the nature of the subject. The author is to be commended in that he has made no effort to discriminate sharply between the executive and the legislative functions of Parliament.

It is a serious fault of the book that the reader is left in doubt as to the authority upon which the various statements are based. If the work were simply a compilation from standard authors, this would not be a serious fault. But the book is not such a compilation. The author has made use of original sources of information. The standard authors are not simply quoted; in many instances they are corrected. Mr. Smith has evidently expressed in some cases his own opinions, yet there is no sign whereby these may be distinguished from the opinions of others. A reader who cares anything about authorities is not satisfied with the simple declaration in the preface that every statement in the book is based either upon official records or upon the conclusions of historians who have made themselves familiar with the subject. He wants to know just what the authority is. Especially does he want to distinguish between the author's own elaborations from official records and his quotations and paraphrases from standard histories. Many passages in the work are designed to give the impression that the

author apprehends more clearly than the standard authors whom he quotes so freely the fact that the free democratic constitution of England is exceedingly modern. He seems to have his eye upon the masses of the people and to wish to make it evident that these were not usually taken into the account in the balancing of the dominant forces of the government until recent times. These passages taken alone would give the impression that Mr. Smith is not so much a victim of the tendency of historians to carry back and attribute to the past experiences which belong only to the present as are our standard authors on the English constitution. Yet there are other passages which would indicate that he is a greater offender in this regard than even Bishop Stubbs or Doctor Freeman. This is especially manifest in his use of the word constitution. The statesmen of the Stuart century were the first to find any use for the word as applied to the English government. Mr. Smith not only follows Freeman and Stubbs in applying the word constitution to the early government, but he does what these authors seem to have been careful not to do; he so uses the word as to give the impression that it was in common use by the statesmen of the earlier centuries. A good illustration of this may be seen in the first volume, page 274. Mr. Smith is evidently following Bishop Stubbs in his account of the establishment of the protectorate of the Duke of York in 1454. He says: "The duke promised to exercise his authority in a constitutional manner, as chief of the royal council." The corresponding passage in Stubbs is:

The duke accepted the election with a protest that he undertook the task only in obedience to the king and the peerage of the land, in whom, by reason of the king's infirmity, "resteth the exercise of his authority." He requested farther the advice and assistance of the lords.

This description was sufficient to suggest the English constitution to the mind of Mr. Smith, and he thrusts in the word in such a way as to convey the erroneous impression that the Duke of York, more than four hundred years ago, expressly promised to rule in a "constitutional manner."

The book as it is is a useful and convenient compilation. As a compilation it would have been improved if the author had not undertaken at the same time to write a history of his own. He might have made it a good independent history had he boldly thrust forward his own work and made it possible to distinguish it from the work of others.

*Geoffrey de Mandeville. A Study of the Anarchy.* By J. H. ROUND. London, Longmans, Green & Co., 1892.—8vo, xii, 461 pp.

Under this title we should scarcely expect to find an important contribution to the constitutional history of mediæval England. Mr. Round, however, is not merely an original investigator of the first rank, but he also avoids the beaten track in his method of treatment. Throughout this volume the biographical detail is wholly subordinated to the political and constitutional development of Stephen's reign. The basis of his narrative is the career of Geoffrey de Mandeville, "the most perfect and typical presentment of the feudal and anarchic spirit that stamps the reign of Stephen." Mr. Round believes that by fixing our glance upon this one man, and by tracing his policy and its fruits, "it is possible to gain a clearer perception of the true tendencies at work, and to obtain a firmer grasp of the essential principles involved." I do not regard this as an ideal method of treatment, because, even in such strong hands as Mr. Round's, it is apt to be discursive and to lack real unity.

The thread around which the narrative is woven is the self-seeking policy of Geoffrey de Mandeville. He had charge of the Tower of London, and his authority was so great that he almost held the balance of power in the conflict between Stephen and the Empress Maud. In 1140 the king tried to secure his adhesion by making him Earl of Essex. This is the only known charter by which Stephen created an earldom, and it is the earliest known creation of a peerage. The next year, while the king was in captivity, Maud won Geoffrey over to her side by outbidding Stephen; her charter makes the earl hereditary sheriff of Essex as well as "*capitalis justitia in Essexia*," and it also contains an important grant of lands.

In his discussion of the term "*capitalis justitia*" it is difficult to follow Mr. Round, because at first he speaks as though it implied jurisdiction in the county court of Essex, but at the end of the chapter the reader carries away the impression that jurisdiction in Geoffrey's feudal courts is meant. Our confusion is increased by the apparent attempt that is made in another place (bottom of page 373) to connect Geoffrey's judicial office with London. Moreover, the comparison between his position in the county and that of the "justices" in towns seems untenable, especially when we consider that what Mr. Round calls the "typical charters" of London and Colchester (page 109) are not at all typical, but, as far as the use of

the term *justicia* or *justiciarius* is concerned, quite exceptional or abnormal. Mr. Round says that the town "justice" had feudal or anti-royal functions similar to those conferred upon Geoffrey; but, by the author's own admission, the Colchester *justicia* corresponds to the later coroner, who was preëminently a royal anti-feudal agent. Moreover, the early municipal records indicate that even the most privileged towns were not exempt from the interference of royal justices during the twelfth and thirteenth centuries. What, it may finally be asked, could be the duties of a "localized" justice in London at a time when, as Mr. Round himself contends (page 356), that city had no "communal" government or corporate unity? The view which I have elsewhere expressed, that the *justiciarii* or *justiciarii* of London and Colchester were coroners, still seems to me to be tenable, though I admit that this may be demonstrated more clearly in the case of Colchester than in that of London. It may be added that, in connection with the new documents printed in this chapter, the author fails to call attention to the existence of the eyre in Stephen's reign, which those documents (page 111) seem to reveal. This fact would strengthen his contention on pages 100, 154, that the machinery of central government, though crippled, was not in complete abeyance.

When the tide began to turn against the empress, Geoffrey sold his support to the queen, who offered him better terms than Maud had granted, and in the latter part of 1141 these new concessions were confirmed by Stephen's second charter to Geoffrey. But even then the treacherous earl was not satisfied. He seems to have aspired to the rôle of king-maker, and in 1142 a higher bid from the empress induced him once more to cast off his allegiance to Stephen. The second charter of Maud gave him an additional grant of lands. This was Geoffrey's last move in the deep and perilous game that he was playing, and it caused his ruin. His treason was soon discovered, and he was obliged to surrender his castles to the king. Toward the close of 1143 he headed a revolt against the crown and fled to the fen-lands of Cambridgeshire. Here he was guilty of fiendish oppressions, typical of this period of anarchy, "when every lord had his castle, and every castle was a robber's nest." While besieging Burwell in August or September, 1144, the great earl was killed by the arrow of a humble churl. Mr. Round should have made the year of his hero's death clearer. In a final chapter the history of Geoffrey's descendants is given. Then follows an appendix almost equal in bulk to the body of the work.

The above outline very imperfectly represents the contents of Mr. Round's book. Incidentally he throws new light on various problems of constitutional interest, such as the title to the English crown, the ceremony of coronation at Westminster, the origin and nature of earldoms, the development of the fiscal system, the administration of London and the early history of castles. He has also done much to straighten the chronology of Stephen's reign, and to vindicate that king against some of the charges of incapacity or weakness which have been brought against him.

The peculiarity of his method of investigation is his critical use of charters to illustrate both narrative and constitutional history. His views regarding the value of this kind of evidence recalls what Seyer says in the preface of his *Charters of Bristol* (1812):

In tracing the history of the English nation . . . old chronicles must be perused, and above all, laws and records; one day thus spent will give more insight into the manners, the character and opinions, as well as the transactions, of a distant age, than thrice the time employed in reading the best history of England.

In like manner Mr. Round emphasizes "the chronicle-value of charters," *i.e.* their importance in supplementing the information given by contemporary historians. What he has accomplished ought, as he hopes, to "encourage the study of charters and their evidence," especially in connection with periods of which our knowledge is scanty owing to the paucity of the ordinary sources. It is certain that a vast amount of political, legal and constitutional history lies buried in charters granted to nobles, municipalities and religious houses.

Some may find fault with the author's severe criticism of Mr. Freeman, Mr. Loftie, Mr. Birch and others. Perhaps his language is now and then somewhat harsh, and he may be too much inclined to drift into polemical excursions. But I thoroughly agree with what he says on the subject in his preface:

It is easier to prophesy smooth things and to accept without question the errors of others, in the spirit of mutual admiration . . . If my criticism be deemed harsh, I may plead with Newman, that, in controversy, I have ever felt from experience that no one would believe me to be in earnest if I spoke calmly.

The English public is so conservative that a half-hearted expression of disagreement with "the leading authorities" fails to carry conviction or to dislodge error. To counteract the excessive veneration of

authority which is characteristic of the English nation, a writer must use plain and at times even strong language, or his words will not be heeded. Investigators of English history will, let us hope, continue to seek the truth and freely state it, even though certain English critics may continue to sneer at Dryasdust treatises, and to be shocked that any one dare refuse to accept all the dicta of Professor Freeman or Dr. Stubbs. In spite of such critics, scholars will rejoice at Mr. Round's valuable additions to the sum of historical knowledge, and will be pleased at the true spirit of independent research which characterizes his work.

CHARLES GROSS.

*Lancaster and York.* By SIR JAMES H. RAMSAY. Two Volumes. Oxford, at the Clarendon Press, 1892. — xlviii, 498 ; xxxiii, 559 pp.

The purpose of the author of this work, as he states in the preface, is "to supply a verified connected narrative of the first 1500 years of the history of England"; and he adds: "The book has been composed to serve no special theory or object, save that of bringing the reader as far as possible face to face with facts." For reasons that are not specified the author has published the last portion of his work first. Sir James H. Ramsay's objections to a purely constitutional history are, that the "writer is somewhat cramped by the necessity of regarding all things from the constitutional point of view, nor can he, without transgressing the proper limits of his subject, do justice to all sides of the national story." The preface seems to promise a history of England, viewed from the political, social, economic and constitutional standpoints. We are led to expect a work conceived on the broad lines of Lecky's *History of England in the Eighteenth Century*, but disappointment awaits us.

The author has consulted all the available original authorities, both the records and the contemporary historians. He has carefully collated his facts, and has given us a connected narrative of England's history from the reign of the unfortunate Richard II (1399) to the Battle of Bosworth Field (1485). The facts are stated clearly, full details are given of parliaments, of convocations, of foreign affairs, of military campaigns, of treaties and of truces. As an example of his minute methods of working, the following passage (vol. ii, p. 3) may be cited :

The Constable de Richemont and the Count of Anjou, who were in command, began by taking Château Landon and Nemours; while another force took Cherny near Joigny. Montargis was too strong to be attacked. On the 25th August the French laid siege to Montereau; Charles joined them on the 21st September; on the 10th October the town was carried by assault; on the 22d Sir Thomas Gerrard surrendered the castle. On the 12th November Charles VII made his first entry into Paris as its King; the Dauphin Louis, then fourteen years old, rode beside him in full armour.

But, while the external life of the government is thus accurately depicted, no attempt is made to describe the undercurrents in English history, the hidden spirit pulsating through the nation. No scientific or in any manner adequate explanation is given of the gradual changes wrought in England during this century. The great constitutional changes effected under the first two Lancastrians are mentioned, but no theory is offered to explain them. The author seems unaware that the vast increase in the power of Parliament was due to the fact that Henry's title was not hereditary, but Parliamentary. When, moreover, an explanation of events or a criticism of any person is given, it is as a rule borrowed from Bishop Stubbs. Thus the only critical comment on the Parliament of 1406 is a quotation from Stubbs, "that it may be taken as 'an exponent of the most advanced principles of mediæval constitutional life.'" Creighton is drawn upon for the summary of the character and abilities of the Emperor Sigismund. While the work of collecting facts and materials seems to have been independent, Ramsay's conclusions and reflections are borrowed (*vide* vol. ii, pp. 24, 49, 78, 119, 159, 320, 492, 553-4).

The work is well printed and contains numerous plans and maps. Another excellent feature is the outline of financial history appended to the account of each reign. Though fragmentary, these outlines are of considerable value, especially to the student of public finance, since an attempt is made to classify the sources of the public revenue and the objects of expenditure.

In his life of Voltaire, Morley says: "Three kinds of men write history: the gazetteer or annalist, the statesman and the philosopher. The annalist's business is to investigate and record events, and his highest merits are clearness, accuracy and simplicity." Sir James H. Ramsay can claim no higher rank than that of an annalist, but he undoubtedly possesses all those attributes that Mr. Morley mentions as an annalist's highest merits. He is clear, simple and above all accurate. But history, since the days of Voltaire and Montesquieu,



has passed out of the mental grasp of an annalist. In the nineteenth century the work of a chronicler, however meritorious, can never attain a higher position than that of a book of reference—a book in which one can with perfect confidence verify dates and the *minutiae* of events. Ramsay's book, however, lacks the chief and all-essential requisite of a book of reference—an index.

GEORGE LOUIS BEER.

*English Trade and Finance, chiefly in the Seventeenth Century.*

By W. A. S. HEWINS, B.A., University Extension Lecturer on Economic History; late lecturer to the Toynbee Trust. London, Methuen & Co., 1892. — xxxv, 174 pp.

\* When the present writer, in conversation with a distinguished English economist, once remarked upon the fact that in University Extension classes in England there seemed to be some demand for economic history and scarcely any for economic theory, he was told that this was because it was easier to find satisfactory lecturers in history than in theory. A young man, my authority went on to say, can get up and tell an audience about the fourteenth or seventeenth century, and there is no one to contradict him; whereas, if he discourses on wages and profits the acute manufacturer and shrewd artisan are ready to catch him up at every turn. This was an explanation which, though not without a touch of irony, probably contained a largish grain of truth. There certainly was a time, and not so very long ago, when one or two treatises were given an unquestioning allegiance, and some half dozen stock ideas were stated and restated *ad nauseam* by those few persons who concerned themselves with the subject. But those days are passing away; it must be comforting to the theorists to find that there is now beginning to be almost as much divergence of opinion about the village community as about value. And, having regard to the depressing opinion above quoted, it ought to be even a little more cheering when the criticism of current statements comes from an Extension lecturer himself, as in the present instance.

Mr. Hewins describes his purpose as that of "supplementing, from contemporary authorities, the larger works . . . which are usually read by the [Extension] students." Accordingly he assumes the amount of knowledge obtainable from such books as Rogers, Toynbee and Cunningham's first edition, and gives us a number of critical essays on the monopolies, the trading companies, the con-

dition of the working classes, and the three commercial treaties of 1703, 1713 and 1786,—essays full of information freshly stated, and of judgments worth considering. Perhaps the most valuable and solid part of the work is to be found in the scattered passages which describe the domestic system of industry, and compare it with modern factory conditions. Mr. Hewins believes,—as most of those who have given any serious attention to the matter are coming to do,—that the effects of the industrial revolution of the eighteenth century have been conceived far too melodramatically; that the domestic industry which it overturned was by no means full of idyllic charm; that, indeed, the rapid development of the factory, while for a time it multiplied and even intensified certain evils, brought out into clearer light abuses which had long before come into existence, and so led to their reform. Mr. Hewins has an intimate personal acquaintance with the condition of the Warwickshire nail-makers; and the sketch he gives of the history of the manufacture during the last three centuries is exceedingly instructive. He sums up with the declaration that the “transition to the factory system has increased the hardships of those who still cling to the wrought-nail trade, but the factory hands are better off and enjoy even greater freedom than was possible under the old system”; and he adds a comparison which I cannot refrain from quoting;

Comparing their prospects under the two systems, there is no single point in which factory organization has not led to an improvement. There are evils to be removed . . . . Two of the processes performed by the women, *vis.*, *fraying* and *turning*, are too severe a strain on their physical strength. The rate of wages, 7s. per week on an average, is low compared with that in the textile industries. Trade-union efforts have not hitherto met with success. But the healthier surroundings, the relatively higher wages, the less laborious work, and the more usual withdrawal of women from the factories have already exercised a beneficial influence on the people. These causes, taken in conjunction with the rapid development of interest in municipal affairs, the improved sanitation, the growth of free libraries and other means of education, the more frequent gatherings for social and political purposes, have greatly improved the lot of working men and women. [Pages 22–23.]

The whole account (pages 16–23) may be commended to the perusal of those who ask what is the bearing of historical investigation on the problems of to-day.

But it has already been hinted that Mr. Hewins's book is largely of a critical, not to say controversial character. The view which he

would seem most anxious to controvert is that which regards with historical approval the great trading companies of the seventeenth century, such as the East India Company, and holds that their trading monopoly was suited to the conditions of the time. As he justly remarks in his very temperate preface, there is danger of a too hasty application to economic history of the theory of evolution; and "it is probable that more stress should be laid on the hostility to the various forms of monopoly which are found during that period." But in the body of the work this judicial temper is hardly maintained; the history of the various companies is accompanied by a running commentary of condemnation which the data presented to us do not always seem clearly to justify; and the summing up in various places scarcely succeed in putting the whole case before us. It is not a little difficult to discover what precisely is the *gravamen* against the company's method, or what Mr. Hewins would have put in its place. He recognizes that individual enterprise was out of the question, and that some sort of trade regulation was necessary (page xiv); and he grants that in the case of distant trades "the joint stock system was far more national with respect to the number of persons benefited than a (merely) regulated company could be," since it gave far greater "facilities for investment" (page 69). But he objects to monopoly. Surely a joint stock implies some sort of limit in the amount of capital invested. One would like to see a plan drawn out by which trade should be carried on by a joint stock company, and yet every one left free to join in the trade with just as much capital as he pleased. Mr. Hewins falls foul likewise, with impartiality, of the regulated companies; and why? Because the regulations imposed by the company "were frequently sufficient to take away all prospect of a reasonable profit" (page 65). Perhaps so; but one would like to know how. I hardly see why we should not recognize the force of the argument alleged at the time on behalf of the regulations, that "if trade were free, the rich would 'eat out the poor . . . and so there would grow a monopoly *ex facto*'" (page 31). For certainly much of the outcry against the companies arose from their limitation of the extent of the undertakings or the amount of stock of the several individuals engaged in the trade (*cf.* page 34). The outcry may easily have come from the richer traders, who saw their opportunities of gain restricted in the interest of the lesser traders; just as to-day it is often the wealthy unscrupulous dealer who is fighting his fellows by "cut prices" who cries out most virtuously against combination, and invokes "freedom of com-

petition." We must not allow ourselves to be unduly impressed by the word "monopoly."

It is a pity that the character of the series in which Mr. Hewins's book appears precludes his supporting his assertions by the citation of authorities. For in many places, and especially in dealing with this topic, Mr. Hewins draws inferences for which he probably has some evidence, but in regard to which we have to suspend our judgment. Thus, the resolution of the Turkey Company in 1718 not to send cargoes for two years is described as "giving the London merchants a monopoly of the trade" (page 51). Surely it affected the London merchants, directly at any rate, as much as other members. The company alleged that the object of the temporary restraint was to overcome a glut in the Eastern markets. What reason is there to suppose that this was not the case; and if it was, why should not their policy be judged in the same way as that of an individual might be who chanced to have a monopoly of the market? If one might venture to dissect Mr. Hewins's mind rather than grub at the facts for one's self, — of course a wrong proceeding, — one might possibly find the explanation of some of his severe utterances concerning the companies in two characteristics. The first of these is perhaps a certain political bias which makes him sympathize with the opposition to the first two Stuarts; and the second is a remnant of — dare one say? — Manchesterism, of which he is himself probably unconscious. For we come across phrases — like "normal condition of trade" (page xv) — which smack strangely of the older economics.

That a reviewer should be led into this vein of controversy is itself a testimony to the stimulating character of the work; most of the books of its size that have appeared of late in this field have been mere *rechauffés* of other people's opinions. There is a good deal more in this of Mr. Hewins besides a condemnation of the companies; and especial attention must be called to his discussion of the effects of the justices' assessment of wages. I must hasten to add that this is just as controversial; and it ought to attract the notice of those who have given a too hasty credence either to Mr. Rogers or to Mr. Cunningham. Our author, with the reverence natural to an Oxford man who realizes how much Thorold Rogers did for his study, has a leaning towards accepting Rogers' opinions — which is very proper; but he interprets them in a higher sense, in which perhaps Mr. Rogers would hardly have recognized them.

The appearance of a book like this is an encouraging sign of the times. It is a prophecy of the day when economic history will have its own circle of serious students and expert critics. And it is, we may trust, but the forerunner of a more considerable treatise from its author, which, by its store of references, shall give more opportunity to the reviewer.

W. J. ASHLEY.

*The Economy of High Wages.* An Inquiry into the Cause of High Wages and their Effect on Methods and Cost of Production. By J. SCHOENHOF. New York, G. P. Putnam's Sons, 1892. — 12mo, 407 pp.

*Economic and Industrial Delusions.* A Discussion of the Case for Protection. By ARTHUR B. and HENRY FARQUHAR. New York, G. P. Putnam's Sons, 1891. — 12mo, 413 pp.

In the first of these works the author begins by showing, through tables and comparisons, that during the last twenty-five years, in England, France, Germany and the United States, increased earnings of the laborers and decreased cost of production have gone hand in hand. Thus by induction Mr. Schoenhof claims to expose the fallacy of "the iron law of wages." In its place he presents what he calls "the true law of wages," which we may express as follows: High wages mean high productiveness, low cost of production and low prices. Only under a system of complete freedom, Mr. Schoenhof adds, can this true law of wages come into perfect operation. Under such conditions, however, in the interests of capitalist and laborer alike a perfect factory system would surely develop itself and all would work in harmony. Laborers and capitalists would not then be fighting each other for the largest share of an imaginary wage-fund, as Ricardo maintained, but each would be deriving a just remuneration from his legitimate share in the product itself.

Here in the United States, this true law of wages has been working itself out, Mr. Schoenhof declares, in our highly developed factory system, under the freedom secured by our laws of possession, not because of, but rather in spite of, the restrictions of our tariff laws. He is able to show us by convincing tables of comparison that, despite our high wage rate, the cost of production in all important industries in this country is equal to, if not actually lower than, that of Europe. America has at last, according to our author, worked out her industrial independence. We may reform our tariff now on the

following basis: Abolish the duty on raw materials; keep on high-skill manufactures enough tariff to raise a revenue; establish technical and art schools to allow our laborers to learn better to compete with their more artistic foreign rivals; and give free scope to each one to work out his own individual end. Under such a policy, Mr. Schoenhof rather optimistically concludes, the present industrial and labor problems will solve themselves.

In the second work under review Mr. Arthur Farquhar deserves high praise for the logical reasoning employed, both deductive and inductive, all through the discussions. But one should bear in mind that though, as Mr. Farquhar maintains, customs duties are powerless in affecting the aggregate balance of exports and imports, still they may be employed in guiding the course and direction of our foreign trade. If, for instance, we as a nation deem our best interests to lie in first bringing the commerce of the American continent under our control, surely we are justified in accomplishing this end, if we will, by means of duties, rebates and reciprocity agreements. This we may do even if some branches of our European trade suffer thereby, provided the end to be secured will warrant this temporary sacrifice.

In his entire treatment of the subject of foreign commerce, Mr. Farquhar seems to me to confuse the laws of national and international economy. The conception that each modern industrial state forms as it were a politico-economic organism—the national standpoint, in short—is in this otherwise able argument utterly disregarded. If no system of protection is necessary between the Atlantic slope and the Rocky Mountain region, differing as they do, why then, Mr. Farquhar asks, do we require protective barriers between Liverpool and New York? The reason is apparent enough. One sovereign state with its own commercial law governs all trade between our East and West, while international custom and agreement—and eventually perhaps the force of arms—must still remain the arbiter of our foreign commerce. In our present stage of economic development, therefore, we can scarcely dismiss commercial treaties and reciprocity agreements as “mere devices of the protectionists” to gain their selfish ends. Indeed, if we extend our view to include the present course of commercial development among European countries, it would seem rather that our path toward a more general international freedom of trade lay directly along these lines.

LINDLEY MILLER KEASBEY.

*Report of the undersigned members* [E. S. MARTIN and W. M. CANTY] *of the Delaware Tax Commission to the General Assembly.* 1893. Wilmington. — 32 pp.

*Report of the undersigned members* [J. B. PENINGTON, E. H. BANCROFT, D. J. LAYTON] *of the Delaware Tax Commission to the General Assembly.* 1893. Wilmington. — 16 pp.

*Report of Counsel to revise the Tax Laws of the State of New York.* CHAS. A. COLLIN and J. NEWTON FIERO, Counsel. Transmitted to the Legislature Feb. 3, 1893. Albany, 1893. — 125 pp.

*Report of the Joint Committee of the Senate and Assembly relative to Taxation for State and Local Purposes.* Transmitted to the Legislature March 17, 1893. Albany, 1893. — 24 pp.

During the past ten years we have had a number of state commissions on taxation, most of which have published documents abounding in suggestions wise and foolish. The reports here reviewed furnish good examples of each class. The Delaware reports are comparatively unimportant because of the insignificance of the commonwealth; but they are interesting as exemplifying the different tendencies at work throughout the country. Delaware raises its state revenues from corporation taxes and licenses, but depends for its local revenues upon the poll tax, the tax on real estate and that on a few kinds of tangible personalty. The farmers object to this and desire to reach in some way all owners of personalty. Hence the commission. The majority report approves of this desire, and recommends that intangible personalty, like money, investments, *etc.*, be taxed, that a tribunal be created for equalizing county assessments and that the collateral inheritance tax be reimposed. Although the signers confess that the general property tax does not work well in other states, they assert that this is due to "dishonest citizens," and that if certain kinds of property be exempted, "cunning and scheming men" will ultimately reduce the governmental revenues unduly.

The minority report, on the other hand, strenuously objects to the taxation of intangible personalty. Almost the whole of the report is an abridgment of the New York report of 1871-72 and the Maryland report of 1888, showing the injustice of the general property tax. The report is noteworthy for the fact that it adopts in its entirety the "equal diffusion" theory of incidence as elaborated by Mr. Wells, and quotes Adam Smith as the chief forerunner of Thiers

and Wells ! And although the commissioners "sympathize with the complaint of the Delaware farmer," they think that under the present system the taxes are "more equally distributed than in any other state." It is much to be feared that the Delaware farmer will not be satisfied with this Platonic "sympathy."

Far more important than the Delaware reports are those to the New York legislature. The counsel and the committee have chosen to present results rather than extended arguments. Their reports may be declared in some sense to mark a turning point in the history of American taxation.

The counsel affirm that they have studied not only the public documents of other states, but also the general literature of the subject, including the views of leading political economists of the day. They suggest that the information so obtained be collated for the use of the public for further reference, but in the present report they prefer to present simply their conclusions, proceeding on the principle of proposing nothing which has already been before the legislature and which has failed of adoption. If this principle were consistently carried out, there would be little chance for human progress. For every innovation is at first opposed, and the mere fact that the legislature has once in former years rejected a plan is neither a proof that they would reject it to-day, nor a reason why the advisers of the legislature should refuse to consider its feasibility. Thus the counsel object to the "building occupancy" tax because the legislature refused to adopt it in 1872. But they also discuss new plans. They object to the single tax, and even to the tax on real estate alone, because they cannot see the equality and justice of levying all burdens on the real estate owner. They object to the income tax as too inquisitorial, and at present quite inadmissible. At the same time they strenuously object to the "listing" system, although they call attention to the acknowledged defects of the personal property tax, and show that in Brooklyn personalty pays only four per cent of the taxes.

What, then, is to be done to secure equality of taxation ?

The general property tax is to-day supplemented by the corporation tax and the inheritance tax. Any great increase in the corporation tax is objected to on the ground that this ought to carry with it an exemption of corporations from local taxation, as in Pennsylvania. But this the counsel think unwise, because the local bodies are not willing to forego so large a source of revenue. Again, they object to a tax on corporate bonds, first, because it is at present legally



impossible to tax bonds held outside of the state, and secondly because bonds are already taxable to the owners as personalty. The only suggestions made as to corporate taxation are, to apply to other corporations the machinery of collection applied to the taxation of bank shares, and to apply the earnings tax on transportation companies to foreign as well as to domestic corporations. As to the inheritance tax, the counsel content themselves with a slight change in restricting exemptions. While apparently regarding with favor the settlement of the mortgage tax question in Massachusetts, California, *etc.*, they refrain from any recommendation, because the legislature has heretofore considered the matter and taken no action. Furthermore they propose a tax on deposits of savings banks above a certain limit. Finally they object to "local option," because they clearly see that this simply means taxation of realty alone; and they correctly maintain that this should be done by a general statute or not at all.

Since, therefore, the present system of taxation is unjust, they think that one of two courses must be adopted : either personalty should be entirely exempt, or substantially all personalty should be taxed. The first plan seems too radical, therefore we must try to reach personalty. This may be done by improving the machinery, by centralizing the administration and by providing for a state equalization of personalty as well as for that of realty.

The report of the counsel is timid and conservative. But it possesses at least the distinction of not falling into the gross mistakes which so many of our recent state commissions have committed. On the other hand, the report of the legislative committee is not only in the main sensible, but it is radical.

In the first place the committee agree with the counsel in opposing the income tax and the principle of local option in taxation. Secondly, in opposition to the counsel, they maintain (1) that the taxation of savings banks deposits would be an undesirable interference with the savings of thrifty people ; (2) that the equalization of taxes on personalty "would legalize a system of official guessing," and would only intensify the conflict between the local divisions ; but (3) that a state tax on mortgages would be a desirable innovation, and even at the rate of only one-half of one per cent would produce nearly five millions of dollars. Thirdly they propose certain changes in the inheritance and corporation taxes, calculated to increase their yield and to equalize the burdens. The progressive principle is to be applied to the inheritance tax, and the exemption

of real estate is to be abolished when the estate exceeds \$50,000. Again the virtual exemption of heavily bonded corporations is to be removed by assessing a corporation tax in such cases upon the par value of the stock, instead of the market value. Finally the great principle is laid down of a definite separation of the state and local revenues. The changes suggested in the specifically state taxes will, it is believed, suffice to meet all state expenses. Real estate may then be left to the local bodies, and the whole question of local taxation may then be discussed by itself.

It will be seen that the committee's report is by all means the more important. The first condition of improvement in our tax methods is to be found in the abolition of the property tax as a state tax. The idea of course is not new; for it has been urged for over twenty years in the reports of the New York state assessors and of officials in other states (*e.g.* Illinois), and it is, as we know, in practical operation in Delaware. But this is the first time that the suggestion has been adopted by a committee of the legislature itself in an important commonwealth. It is in line with all the best thought on the topic, as well as with the tendency of recent tax reforms in Europe. This alone would make the report noteworthy.

The suggestion of a graduated inheritance tax is perhaps in harmony with the growing public sentiment. But the proposed plan of dealing with corporations is not so satisfactory. If the heavily bonded corporation is so successful that it pays high dividends—as is frequently the case—the adoption of the par value instead of the market value of the stock as a basis would only intensify the present inequality. The counsel, again, are entirely too timid in deprecating a tax on corporate bonds. The taxation of the corporations on an assessment equal to the value of their bonds would immediately remove the legal obstacles, and would restore equality of taxation as between the various classes of corporations. But neither the committee nor the counsel see that no form of corporate taxation can satisfy the demands of justice until the problems of double taxation are attacked; and that no adequate solution can be found until inter-state agreements are adopted. It is to be deplored that no suggestion of this kind is to be found in either of the reports. The proposed tax on mortgages, again, is a makeshift. The committee forget that to tax the mortgagee on the mortgage and the mortgagor on the whole value of the land is an unendurable double taxation. Were the mortgagor to be taxed only on the unencumbered portion of his property, as is the case in many other states,

the tax on mortgages would be less unobjectionable, —although even then the plan hinted at by the counsel would be preferable.

Slowly, but surely, we are moving toward a readjustment of the American system of taxation. The ultimate form can already now be faintly discerned: A separation of state and local revenues; the state revenues derived chiefly from corporation and inheritance taxes; the local revenues derived from real estate and the other elements of taxable faculty. Both the committee and the counsel recognize the fact (and herein they differ from the Delaware commission) that the problem cannot be solved merely by exempting personalty. Both see that the income tax, as a state or local tax, is no solution for us. Both are groping after adequate substitutes. That some form of mortgage taxation will be a part of the new system, is probable. That a more refined system of corporation taxation will reach other important classes of personalty, is certain. That additional taxes must be imposed, designed to reach the remainder of individual faculty —and based perhaps on outward signs and presumptions —is not recognized either by the New York or by the Delaware reports. But the recognition of the fact will come as soon as the demand for the abolition of the personal property tax has made more headway. Let us be thankful at all events that the New York reports take on the whole a step in the right direction. They do not give us by any means all that is needed; but the adoption of their fundamental proposals would make future reforms less difficult.

EDWIN R. A. SELIGMAN.

*Die Handelspolitik der Wichtigeren Kulturstaaten in den Letzten Jahrzehnten.* Drei Bänder. Schriften des Vereins für Socialpolitik, XLIX, L and LI. Herausgegeben von Dr. GUSTAV SCHMOLLER. Leipzig, Duncker und Humblot, 1892.—x, 645, 210, 208 pp.

*Libre Échange et Protection.* La politique douanière de tous les pays expliquée par les circonstances de leur état social et économique. Par M. LÉON POINSARD. Paris, Firmin Didot et Cie., 1893.—xvi, 630 pp.

These four volumes deal with a single subject, the commercial and industrial reorganization of Europe during the past two years. The intense agitation has at last expended itself in tariffs, treaties and conventions, of whose origin and history these works have

gathered up the essential facts and packed them down for future reference.

By far the more valuable and comprehensive of the two works is that of the *Verein für Socialpolitik*. This presents an enormous mass of facts, assiduously collected from all quarters, and scientifically arranged by thoroughly competent specialists in every country of the civilized world. Every personal element has been so far as possible eliminated. The whole work was carefully outlined at first by the editor, with the express purpose of securing a just proportion between the various parts and facilitating international comparisons. It includes in its scope the effects upon the social body as well as the influence exerted upon particular industries by recent changes in the tariff laws. It was not anticipated that any new or startling discoveries would be made ; but the series was intended to illustrate the general state of affairs now existing, together with the causes which produced it. Previsions and predictions, which so often overweight books upon these topics, were carefully excluded. Especially is the work valuable in its treatment of those countries which lie on the borderland of civilization and which are partially isolated by reason of differences of language. The chapters upon Russia and the Balkan States have rendered much interesting matter available to the student of commercial history. Dr. Peez, the zealous advocate of a Pan-European *Zollverein*, contributes a good discussion of the German-Austrian relations. In the article upon the United States Professors Mayo-Smith and Seligman have summarized the recent tariff legislation ; and several tables are appended which will be valuable for reference. It should be noted that this portion is printed in English, so that it is more available for use by American students. This collection of monographs is on the whole an authority which no student of modern international relations can afford to be without.

France appears to be the keystone in the European arch of protection. The two works before us give an opportunity of comparing the opinions of two competent French judges as to the probable effect of the tariff of 1892. The tone of these views cannot be said to be cheerful. In the German work Dr. Devers, representing the social or anti-classical French economists, says :

If the tariff of 1892 should cause a high price of grain or a decrease of exports, public opinion, so powerful in France, would surely be ready to reduce it at once.

And M. Poincard, a moderate protectionist, writes :

It is true that the measures of retaliation directed against us by some countries seem at first disquieting from the point of view of a closure of our foreign markets. But these countries will suffer more than we by the new state of affairs and will be compelled to seek anew a market for their raw produce.

This reasoning is applied to Turkey and Eastern Europe to-day exactly as it was used in 1887 for Italy. But Dr. Sombart has shown that the tariff war between Italy and France has opened a new market for Germany in the south. And it is not unlikely that the same result may follow with regard to Spain. The fact which writers like M. Poincard neglect is, that Germany is seeking for cheap raw materials and will eagerly take all that the agricultural states have to give, if they will but take her goods in return. The agricultural states are indeed compelled to seek a new market for their raw produce, but it is in Germany and not in France that they find it at last.

The excellent chapter in Dr. Schmoller's work upon the conditions in Bulgaria, Servia and Roumania sheds much light upon the troublesome Eastern question. The growth of German trade and influence in the Danubian countries is bound to be a factor in any political complications of the future. All that is needed is lower railway rates in Austria-Hungary and a further clearing of the Danube river in order that a powerful impetus may be given to the present tendency toward a relative decline of French trade in the East.

This brings us to what seems to be a fundamental defect in M. Poincard's work. He fails to appreciate the condition of affairs in Germany and the Balkan States. More than forty pages are devoted to a discussion of Turkey, while but eighteen are given to Germany, though the latter confessedly "takes rank in industry second alone to Great Britain." Despite the author's attempt at candor and fairness, it appears as if national prejudices had not been altogether eliminated ; or else the author is not familiar with the mass of German literature upon the subject. There is a tendency, natural perhaps to a patriotic Frenchman, to advocate such remedies for the ills of Europe as would redound to the industrial independence of France ; that is to say, to under-rate the importance of the national idea which is so potent a factor in Italy and Spain. Although, indeed, on grounds of abstract expediency, the present exclusive policy of some of these countries may deserve the criticism to which

M. Poincard subjects it, yet this policy has been rendered necessary by the action of France. But the author does not hesitate on some occasions to criticise his own people. He ascribes the present unrest in France to the universal distaste for industry manifested by the upper classes, the exaggeration of militancy, the tendency to speculation, and finally to the excessive development of governmental activity.

While issue may be taken with M. Poincard as to some of his final conclusions, his work is on the whole a very suggestive and valuable one, especially for French readers. This importance is derived from the fact that it speaks for a school not represented in the *Société d'Économie Politique*. It reads much like the work of Friedrich List, especially in its classification of nations according to the degree of industrial development which they enjoy. The author distinctly affirms that the tariff problem is rather social than industrial or commercial ; and *laissez faire* is by no means assumed as an ideal principle. Thus he takes direct issue with "The Economists."

They move [he declares] in an arbitrarily chosen environment, where abstractions and suppositions abound and where incomplete facts are grouped in an order which is totally unscientific ; and they lead at every moment and in all places to an all-powerful contradiction with the circumstances of practical life.

He even criticizes Adam Smith's fundamental assumptions and boldly declares that his followers have succeeded in copying nothing but his mistakes. An extended discussion of the errors incident to the statistical method as applied to the tariff problem contains much that is valuable. The author concludes that it is the natural interest of Great Britain, Belgium and the Netherlands to enjoy an unrestricted foreign commerce; while Russia, Turkey and the South American republics, with Spain and Italy, are by the temper of their peoples and the natural conditions of their situation and soil precluded from any considerable industrial development. The true interest of the latter, he says, would be to rely upon the great industrial nations for their manufactures and be content with their lot. This argument, while savoring of self-interest for France, is consistently carried out.

A valuable feature of the work is that part devoted to the effect of the protective tariffs in Russia and Italy in attracting an alien population which assumes the control of industrial ventures. There is much good food for thought in this part of the book.

*The History and Theory of Money.* By SIDNEY SHERWOOD.  
Philadelphia, J. B. Lippincott & Co., 1892. — 436 pp.

This is a University Extension course of twelve lectures, with several addresses introductory to the course, a verbatim report of the discussion brought out by each lecture, and the syllabus placed in the hands of the members of the class. This course must have realized in a high degree the ideal of a University Extension course. The matter seems sufficiently full and well-chosen. The style is clear and interesting. The attitude of the lecturer on controverted points is wisely moderate, being neither rigidly conservative nor aggressively radical. Most of all, the tone of the lectures is thoroughly scientific. The acquisition of truth, rather than the accomplishment of some practical end, is the object aimed at. This is certainly one of the most important elements of the university spirit; and, if the University Extension movement has any good reason for its existence, it is its fitness to extend this spirit among people in general. There are numerous platform lecturers far better fitted to popularize and retail the discoveries of science than is the average university professor. But public teachers of the former class are, almost without exception, too dogmatic and too narrow of view. They love to set forth with absolute assurance striking principles which are in reality of doubtful validity or of quite limited application. The real complexity of truth is sacrificed, that rough and ready *formulae* for the solution of practical difficulties may be furnished. It is naturally to be expected that the university teacher will avoid these faults, since he is cognizant of the numerous limitations which should be set to the application of his happiest generalizations. Professor Sherwood fully satisfies this expectation. He shows himself a true economist, more anxious to develop a scientific, impartial attitude of mind than to furnish ammunition against "free silver" or "fiat money," though, with regard to those practical questions, his views are sufficiently orthodox.

Of the book, considered as a book—something offered to the reading public—one cannot speak in quite such strong terms. It of course does not profess to be of great value to specialists, though such persons will find much to repay a careful reading. Again, it is doubtless not offered as an ideal popular treatise on money. The University Extension lecturer whose class are reading assigned books, properly enough takes much for granted that a popular hand-book should contain. Besides, for such a hand-book, the space given to

the after-discussions could have been much better used. For similar reasons the work is not adapted for a text-book. In fact the book can be most favorably judged when looked upon as nearly related to the published proceedings of semi-scientific societies. As such it will be primarily of interest to the persons who took the course, though it has considerable value as a popular treatment of the subject, and will in many ways be useful to the teacher or advanced student of economics.

In the statements of fact and in the opinions expressed, there is little to criticise. It may be questioned whether Professor Sherwood is correct in supposing that no bimetallist expects that "absolutely, to the furthest fraction, the ratio could be maintained." De Laveleye and Cernuschi certainly seem to entertain such an expectation. Such is presumably the attitude of all those who hold that under international bimetallism Gresham's law would not operate; since they defend that position by arguing that the underrated metal would have no outlet, *i.e.*, there would be no place where it would be worth more than as money. So de Laveleye distinctly maintains that the price of the precious metals in the mint market would dominate every other possible market; that, "if in all the mints of the world we could obtain for a pound of gold the equivalent of  $15\frac{1}{2}$  pounds of silver, and reciprocally, then their equivalent of value would necessarily impose itself on commerce" (*Fortnightly Review*, 36, 120).

F. M. TAYLOR.

*Principii di Scienza Bancaria.* Da CARLO F. FERRARIS.  
Milano, Hoepli, 1892. — 445 pp.

Professor Ferraris is one of the most distinguished Italian economists. His numerous works on administration, on statistics, on money, on workingmen's insurance, — all of them of a distinctly Teutonic cast, because of their positive and historical trend, and their decided, although not exaggerated, tendency toward state socialism, — have secured for him an eminent position in economic science. In the present work, one of the most notable productions of the year, we finally have his well-known competency in banking matters turned to good account in a general systematic treatise on the subject.

The book is divided into three parts. In the first the author traces the general theory of credit; in the second he deals with the



general forms of credit; and in the third he treats of the special forms of credit. In his clear account of the theory, Professor Ferraris distinguishes very much in the German fashion between operations of credit in the wider, the strict and the strictest sense, according as the economic goods with whose transfer we deal are consumable, or fungible, or consist in money. He discusses the nature and value of credit relations in much detail, giving a very instructive comparison of money and credit. The different instruments of credit, which he subjects to a careful analysis, while due to the permanent or temporary lack of money, exert, he thinks, only a negative influence on its value.

In the second part the author examines the operations of the various institutions of credit, and explains the paradoxical fact that these institutions can give credit for a longer period than they receive it. But the advantages which they offer can be obtained only on condition of their observing certain economic and technical laws which are at the basis of every good banking system. The fundamental law is that the nature and combination of the debits must form the guide for choosing the nature and combination of the assets. This latter part of the book will be found valuable not only for the student of theory, but also for the practical business man.

The author then treats of the constitution of the different forms of credit, and of governmental interference. He does not lose himself in the discussion of the theoretically best form of credit institutions, but maintains that almost every one of the various existing kinds have a certain historical justification. He holds that the government should never interfere with the freedom of movement indispensable to economic management, but that it ought to limit itself to laying down general conditions within which the various institutions should act, and such special rules as may be necessary for safeguarding the public interests. Among the general rules he calls attention to publicity and responsibility.

In the third part, which is the most important and which takes up two-thirds of the volume, we see the historical and positive tendency of the author. In fact Ferraris, in devoting several chapters to commercial credit, credit on movables and real property, and agricultural credit, always discusses the actual condition and the facts of the various institutions, and then follows with a criticism of the theory. This method seems logical, and the most fruitful in results. He commences with an account of the system of commercial credit in

England, based substantially on deposits and bank credits. In his discussion of the provincial banks, the London banks and the Bank of England, many of his pages recall the best work of Jevons and Bagehot. The author takes up the theory of discounts, first on the hypothesis of an isolated market, and then in the case of international exchanges. He discusses the relations between discount and interest, and shows how the former influences the latter. He then treats the question of note-issues. The best basis for a circulating medium is a strong metallic reserve. Securities do not form a sufficiently adequate guarantee, nor are they always quickly realizable. A metallic reserve alone gives a solid and elastic basis. In the case of a single bank the reserve need not be very large, but in the case of a system of multiple banks a more rigid metallic basis must be secured. Ferraris is opposed to the system of fixing any maximum to the issue, as incompatible with the necessary elasticity of the circulation. He prefers on the whole the system of bank monopoly, but is careful to warn us that his discussion refers to the special conditions of Europe, and not to those of the United States, where the situation is quite a different one.

The treatment of commercial credits is completed by a study of internal and international payments, especially through the medium of the domestic and foreign exchanges. The last three chapters are devoted to credit on movables and on real property, and to agricultural credit. In credit on movables the author distinguishes two forms, (1) industrial credit by means of which capital acquires a new productive force, and (2) the "movable" credit connected with general trade in securities and stock-exchange speculation. The author, while demanding a careful supervision over this latter matter, does not want governmental interference with credit on movables as such, because no laws can do away with the speculative character of the transactions. Ferraris studies the various kinds of credit on movables which are of importance to-day, such as those employed in the founding and transformation of industrial enterprises, the emission of loans, the various trust and finance companies, the trade in securities, and especially stock-exchange operations. We do not find any fixed system of regulation; in fact we find the most absolute liberty, almost anarchy in this matter. The great danger, of course, is that credit of this kind always serves as a spur to illegitimate speculation. The author thinks that a strong single bank of issue, such as he advises, will exert a favorable influence on credit on movables.

As regards credit on real estate, after explaining its nature, Ferraris studies the different systems. In Germany it has assumed three different forms,—combination of land owners, state or provincial institutions guaranteed by the government, and private corporations. Similar forms are found in Austria. In France, on the other hand, there is only a single large private corporation, with a board of directors nominated by the state, and dealing with local credit as well.

In the last chapter, on agricultural credit, the author distinguishes between credit for agricultural improvements and that for the ordinary farming operations. He dwells especially on the systems of Raiffeisen and Wollemborg, as practiced in Germany, Austria, Italy, Switzerland and other countries.

Such is the scope of the present volume, and such the manner in which the theme is treated by the author. The whole treatment gives evidence of profound erudition, which is especially seen in the very full and useful bibliographical notes. At the same time the originality of thought as well as the lucidity and precision of style go to make up a work which is bound to become authoritative and indispensable to students of the subject.

UGO RABBENO.

*A History of the Theories of Production and Distribution in English Political Economy from 1775 to 1848.* By EDWIN CANNAN, M.A. London, Percival & Co., 1800. —xi, 410 pp.

The subject of Mr. Cannan's book is in one sense indicated with perfect accuracy by its title. It is an examination of the theories of production and distribution set forth by the English writers from Adam Smith to the younger Mill. Their doctrines as to the productiveness of labor, the nature and functions of capital, the law of diminishing returns, the origin and cause of wages, profits, rent—these are followed with scrupulous care in detail, and with unquestionable ability in stating and dissecting the views of each author. Mr. Cannan has mastered everything essential in the literature of the period. His work is scholarly, exact, fully furnished with references to the authorities, and it cannot fail to be stimulating and helpful to all economists.

There is another sense in which Mr. Cannan's book is less faithful as a history. Doubtless it is going too far to require that an historian should approach his subject, as we are told a biographer

should, in a sympathetic spirit ; but surely we may ask that the historian should set forth the merits as well as the defects of the men whom he discusses, and should present a full and fair picture of his subject as a whole. It is perhaps unfortunate that Mr. Cannan has limited himself as narrowly as he has to the doctrines of production and distribution. Value and exchange, money, international trade, are not considered at all, or referred to but scantily, so far as may be necessary for an understanding of the main subject. But there is another limitation in Mr. Cannan's work, of a more essential sort. Mr. Cannan dissects rather than expounds. Not that he fails to state, with scholarly accuracy in the main, the doctrines which he criticises ; but his comments are directed to their weak points only. The reader unacquainted at first hand with the writings of the classic writers or their predecessors would rise from this volume with the conviction that all they had written on production and distribution was worthless ; that no advance in knowledge was achieved at their hands ; that their conclusions perhaps served a temporary purpose in promoting the reform of the Corn Laws and Poor Laws of England, but that as contributions to general theory they had simply to be flung aside once for all.

In truth, the attitude of Mr. Cannan is nothing if not critical, nay hostile. The reader will look in vain through the volume for a syllable of praise or even of respect, while he will find many slighting allusions and acrid comments. Two sentences of Adam Smith's, running over five lines, are noted as "only a verbose method of asserting" something which Mr. Cannan finds himself able to put in three lines. Adam Smith was a fluent writer, desirous of securing for himself a wide hearing ; but few of his readers have found him verbose. Ricardo, "like most people who have not had the advantage of a literary education, was apt to think that a word ought to have whatever sense he found convenient to put upon it" ; and moreover thought "that a low price of corn means high profits, which, *as became a man of finance*, he assumed to be a blessing." James Mill was Ricardo's "henchman," and "was true to his principle of excluding, so far as possible, everything of human interest from his work." Senior "makes the most monstrous assumptions," and "shows extraordinary incapacity to keep to the point" ; Chalmers writes "in his usual turgid style" ; Torrens's work is "as long-winded as its title." The younger Mill comes in for more than his full share of this sort of comment. "Clearly there is little but hocus-pocus" in one train of reasoning, where Mill says that labor alone

is the primary means of production, and concludes that all advances of capitalists are ultimately resolvable into wages. This, by the way, seems to the present writer a sound and important proposition, notwithstanding the contemptuous manner in which Mr. Cannan dismisses it. Again, Mill uses "the most unwarrantable assumptions and the most invalid arguments," is guilty of "a most preposterous arithmetical example," and his chapter on "Fundamental Propositions on Capital" is "a most hopeless farrago of blunders."

Surely there are other things to be said of the contributions which the classic school made to the theories of production and distribution. When we consider what was the stage of economic speculation before the time of Adam Smith and after the time of John Stuart Mill, on such subjects as the division of labor and its consequences, the origin and functions of capital, the significance of interest, the causes determining wages and differences of wages, rent and monopoly gains, we may surely feel some gratitude and express some praise. In truth, economics was virtually a blank on many of these topics before the classic writers; while any current text-book, whether English, German or French, whether "orthodox" or "new school," will be found to contain the gist of their doctrines, with the solitary exception of the wages-fund theory. That these doctrines need some thorough overhauling and reconstructing, and that economic science is now in a stage of healthful transition, no one will deny. To enter on a discussion of those parts of economic theory in which the doctrines of the classic writers still have essential validity, would pass the bounds of this notice; but few would be disposed to sweep them away as unrelentingly as does Mr. Cannan.

If economic study were still in the stage at which it stood in England and the United States a quarter of a century ago,—if Adam Smith and Ricardo were still deified, and Mill's *Political Economy* were still accepted as a definitive statement of all that was worth knowing,—such a book as this might do eminent service. It would awaken, even though rudely, those who thought themselves able to doze in quiet certainty. Even as matters stand, it is an able and stimulating piece of work, however one may differ with the author, not only in temper, but on matters of substance. But as an historical estimate of what was done by the classic writers, it fails. The time has come for a calmer mood and a juster weighing of the merits and defects of the writers of the past.

F. W. TAUSSIG.

*Twenty-second Annual Report of the Massachusetts Bureau of Statistics of Labor.* Boston, 1892. — 579 pp.

A tenement-house census of Boston was the work of the Massachusetts bureau of labor statistics last year, and the first installment of the results is embodied in the volume before us. As was to be expected, coming from this bureau, the work is both comprehensive and thorough, and the report an exceedingly valuable one. The investigation was not limited to tenement houses in the narrow sense in which the term is commonly used, but was made to include every "place of residence hired or leased."

The subject is divided into three sections : (1) Tenements, Rooms and Rents ; (2) Sanitary Condition of Tenements ; (3) Place of Birth, Occupations, *etc.* of Residents in Tenement Houses. Only the first section is printed in this volume.

The present report gives the number of tenements to a house and the number of rooms to a tenement ; the number of families having specified numbers of rooms ; the population residing in said rooms by sexes ; whole number of rooms in all tenements considered, with the average number of persons to a room. These facts are presented in detail by precincts, with summaries by wards and a recapitulation for the whole city. Following this is a series of tables showing the rents paid for these tenements : first, the average monthly rent, according to the number of rooms ; second, the classified monthly rent — under \$5, 5 to 10, 10 to 15, *etc.* — classified according to number of rooms ; third, the number of families paying specified actual rent according to rooms. The customary "Analysis" of the tables completes the book. It is creditably clear though not very concise. The points brought out are of the utmost interest to the city and to civilization in general, although their full value will not be appreciated until the next report appears. It is only to be regretted that more cities have not made similar studies, that more complete comparisons might be possible, as those obtained from the United States census are not wholly satisfactory.

One of the first points of interest brought out by the "Analysis" is the influence of modern apartment houses upon the figures. Thus it happens that ward eleven, precinct one, the Back Bay district, one of the choicest residential portions of the city, shows the highest average number of persons to a rented house, *viz.*, 26.82 ; while the next greatest number, 17.81, is found in the slums at the North End, ward six, precinct four. The true condition of the population is

understood by comparing, not the number in a house, but the average number of persons in a room. In the Back Bay district this average is 0.52, while at the North End it is 1.63. Expressed a little differently, in one district two rooms are occupied by one person, while in the other district every two rooms have to accommodate three persons. Even this, however, is not in itself an indication of over-crowding; for it is quite possible for two persons to live very comfortably in one room if they take their meals elsewhere. This is well illustrated in Boston, where 1053 families, comprising 2067 persons, live in tenements of one room, but a large proportion of them were found to be man and wife, who were out at work during the day and did not eat their meals in their rooms. This class, however, constitutes only a very small portion of the population—less than one per cent. As the tenements increase in size (number of rooms) the average number of persons to a room decreases. Tenements of four rooms, which house one-quarter of the population, are found on the average to contain families of between four and five (4.15) persons. As the family will usually consist of man, wife and two or three children, presumably young, a flat with kitchen, sitting-room and two bed-rooms cannot be considered over-crowded, of course leaving the size of rooms and sanitary condition out of the question. As the number of rooms increases the condition seems to improve. Tenements of five rooms and over have on the average less than one person to the room; and since more than one-half the population live in this class of tenements, we cannot from the average for the city predicate an over-crowded condition. It must be remembered, however, that an average implies the same divergence above it as below, and while the average for the whole city is quite satisfactory, there are some congested quarters. This is clearly brought out in the report, and ward six, which is taken as an illustration, is shown to be considerably crowded. Four per cent of the population of this ward live in tenements of one room, and the average number of persons to each such room is 2.67. One-quarter of the population lives in two-room apartments, with an average to the room of 1.87. Thirty per cent have three-room flats and average three to every two rooms. When we reach the four-room standard we find 19.45 per cent of the population, in families of five and six, huddled together in what was before supposed to be a kitchen, sitting-room and two bed-rooms.

The report is an interesting study in social science, and from the statistical standpoint it is an excellent piece of work.

*Criminology.* By ARTHUR MACDONALD. New York, London and Toronto, Funk & Wagnalls Co., 1893. — xiv, 416 pp.

From the time when the theory was promulgated that this was the best of all possible worlds, and when the English law was held to be the quintessence of human wisdom, to the present, when there is not a doctrine, however well founded and seemingly ingrained in human nature, that is not subjected to critical analysis, the whole conception of the social manifestations of man has undergone a radical change. Formerly the mere fact that a certain act had been committed which the moral sense of the community (the ethical sense of the preceding age) had condemned through the will of its governing body, entailed as a natural sequence a punishment aiming to avenge the crime. This, it was believed, was the best as well as the only way to meet the attack on society. Nowadays, however, the scientists take from medicine the idea that to cure a disease it is necessary to know its cause, and the attention of the criminologists (the appearance of this neologism is in itself significant) has been chiefly directed to the study of those causes and antecedents which have as a result the modern criminal. I say modern criminal, for as there has been an evolution in society in general, so there has also been a development in the methods of attack upon the social structure. Physical violence seems to be more and more on the decline, owing to the additional safeguards provided by complex political organization. This organization, however, in its turn engenders the resort to trickery, fraud and subterfuge which characterizes criminal activity at the end of the nineteenth century.

Recent investigators have with infinite patience collected a vast amount of data dealing with the physical, moral and social sides of the criminal, the causes which have given rise to the class of viciously inclined and the origin of the environments which call those inclinations into play. Among these collectors in the domain of criminology, the one who has actually created a new school of investigation is undoubtedly Dr. Cesare Lombroso, of the University of Turin. His *L'Homme Criminel* (Turin and Paris, 1887) has given the world a great mass of statistics and observations from which he deduces the criminal type. He maintains that some men are born criminals as others are born blind or scrofulous, and in support of this thesis he marches up column after column of figures, exhibiting such apparently diverse and unrelated facts as the size of the skull, the measurement of the brain, the color of the eyes and hair, the position



of the ears, the shape of the jaw, the shape of the nose, even the handwriting and sensitiveness to pain. All these have, according to Lombroso, significance in pointing to the atavistic origin of the criminal. He has, in fact, a physical explanation for all criminal manifestations. The statistics which he has adduced in support of his hypothesis (for that it still remains) have been assailed on all sides by eminent criminologists like Joly, Topinard, Ferri and Marro. As between the evidence and the arguments on the two sides the student can as yet only suspend judgment, feeling that the science is in its elementary and largely empirical stage, and that generalizations in this field are very dangerous and misleading.

Mr. Macdonald, the author of the book under review, is a disciple of Lombroso. In the first part of his book he gives us mainly a recapitulation of the doctrines and facts found in Lombroso's works; the recapitulation being, however, so very much less extensive than the original work that the convincing force of the figures is necessarily much diminished. Nor can it be said that anything more than a mere indication of a method of ascertaining facts by the skillful questioning of criminals and their reformatory and prison records has been given by the few actual cases cited at very great length by Mr. Macdonald in the latter half of his book. The facts acquired by questioning criminals must be examined with a great deal of caution; the motive for accurate and truthful answers is altogether wanting and the inability of the criminals either to think or express their thoughts correctly must always be a great obstacle to the acquisition of knowledge by these means.

In his short chapter on criminal hypnotism, the author does not seem to question the possibility of criminal suggestion, but appears to think that there is little doubt that the criminal thus hypnotically created would by his own action betray the hypnotist who had induced the criminal state of mind. That, to say the least, is merely hypothetical and would hold true probably in a few cases, but in many others where the motive could more easily be ascribed to the actual wrongdoer, the creator of the wrongful impulse would be forgotten, and all the more surely, had the hypnotiser taken the probable precaution of secrecy in his operations and of suggesting to the victim in the hypnotic state entire forgetfulness of the operator.

It is a pity that Mr. Macdonald has not devoted more space to the elaboration of his chapter on criminal contagion, especially of that part which treats of the recital of peculiarly atrocious crimes and the influence that the reading thereof has on the weak and criminally

inclined. The morbid interest which the description of crime and criminals arouses is recognized by many newspapers, who vie with one another in exciting a maudlin pseudo-pity for the criminal, and through the influence of sympathy thus induced, create in the weak the desire to emulate the example so strikingly described. If Mr. Macdonald, by expanding this chapter, could show the great number of persons thus influenced by the daily press, he might create a public sentiment strong enough to prove to the news gatherers and column writers that prize fights and brutal murders are not the most desirable objects of interest in life.

The bibliography at the end of the book, extending as it does over one hundred and thirty pages, is very useful to the student, and for that fact alone the book would find a place on the scientist's bookshelves.

S. H. SCHWARZ.

*Tools and the Man: Property and Industry under Christian Law.* By WASHINGTON GLADDEN. Boston and New York, Houghton, Mifflin & Co., 1893.—308 pp.

While noble attendants are disputing whose prerogative it is to pull on the king's stockings, his majesty must wait barefooted. There are certain things which that modern monarch, the working part of humanity, needs to have done for it; but persons most inclined to render the services are often warned not to do it, lest they trench on others' domains. The economist must keep out of ethics and the moralist out of economics; and, therefore, the relation between "property and industry" and "Christian law" are tardily and imperfectly studied.

The thing to be done is definite enough. What is the actual economic system, and how does it work? This is an economic inquiry that needs to be answered. What would a morally perfect system be, and how would it work? This is a question of practical ethics. How may the actual system be made to resemble more closely the ideal one? What are the principles governing true industrial reform? What rules shall we establish if we are to make the working world better than it is? What natural forces are at work tending to make it better than it is, with no reformatory effort on our part? These inquiries are in the domain of economic ethics; but if we get our ideals ready-made from the hands of the ethical philosopher, the work that remains for us will be economic. It ought to be possible, first, to do the needed work, and, secondly, to do it in a legitimate capacity and without disputes as to prerogative.

Dr. Gladden's book undertakes to do some of this work, and is unusually successful. It contains the substance of lecture courses delivered at the theological seminaries of New Haven and Meadville, at Cornell University, and elsewhere. It applies moral tests to the institution of property, the system of wage earning, the process of competition and the existing organization of society. It inquires how the industrial system can be Christianized.

It incidentally determines how the needed work cannot be done. It finds socialism, in its pronounced forms, wanting, and detects the injustice of seizing the value that resides in land honestly acquired. If the term socialism be made to signify any extension of the activity of the state into regions now abandoned to individuals, then the world is rapidly becoming socialistic and ought to become so.

Dr. Gladden finds many points at which society may be made more Christian. The wage contract may be made more just by a proper balancing of the contending forces. The plan of dividing the fruits of industry may be improved by merging the person of the wage earner in that of the profit and interest receiver. There may be profit-sharing and various other approaches to full coöperation; and there may be much coöperation of the complete kind. There may be numerous other measures for tempering the harsh action of the system under which we live.

The book will not fail to clarify the view of those who are willing to work for society and are seeking direction.

J. B. CLARK.

*Gesetz und Obrigkeit.* Von P. KLOEPPEL. Leipzig, Verlag von C. L. Hirschfeld, 1891.—129 pp.

The practical end of this work is to justify the exercise of an independent ordinance power by the chief of state in the modern constitutional monarchy. The monograph is a contribution to the unending discussion among German publicists as to the relations of the legislative and the administrative power. A basis for the solution of the immediate problem is provided by the author in a review of the historical process by which the various conceptions of law and rights have been developed and differentiated. In Hellenic philosophy he finds the complete notion of a broad jural order determining social relations—*νόμος, jus, recht*—but no idea of rights in the subjective sense. This latter conception was worked out by the Roman law through the *legis actiones*; but subjective rights were regarded merely

as an outcome of the general legal order. The praetors as well as the *comitia* only applied, but did not originate, *jus*. When, however, the whole legislative as well as judicial authority became concentrated in a single individual, the fact that he granted *actiones* was made the basis of the theory that he created the rights and the law on which the *actiones* rested. Here originated the doctrine that will is the essential element in law, and that all law, whether *jus* or *lex*, is command. Supported by the Christian conception of an all-powerful God guiding the universe by arbitrary decrees, this theory of law dominated the middle ages, was transmitted through the nominalists to the Protestant reformers, became the speculative basis of the absolute monarchy and of the social-contract theories which overthrew it, and persists to-day in the so-called school of positive law. For this "byzantinisch geschulte Rechtswissenschaft," as he calls it, the author has little respect.

Under this theory of the nature of law, the sovereign in a state is that person or body of persons whose will is the sole source of law. It is hardly possible in this age to claim for any monarch such a character. But if full sovereignty be ascribed to the popular representative bodies that have everywhere arisen, the monarch is relegated to the position of a mere ministerial agent of those bodies — executive in the strict sense. But such is not in fact the position of the German constitutional monarchs. They are in a sense coördinate with the representative bodies. The theoretical basis of their position is only to be found in the doctrines of the historical school of law and political science. This is the basis assumed by Mr. Kloeppel. Law is not made; it grows. The state is not created in a moment by the fiat of a sovereign; it unconsciously develops out of conditions of physical and moral nature. In the jural consciousness of the people of a given state is to be found that state's law in the broad sense (*recht, jus*). An essential characteristic of any state is a recognized authority (*Obrigkeit*), interpreting and applying the law as existent in the popular consciousness. Originally there is no distinction of legislative, executive and judicial functions. Nor is this distinction logical in later times; for the work of so-called legislation is not in any true sense the origination of law (*Recht*).

Das Gesetz ist ein Ausspruch nicht darüber, was Recht sein, sondern was als Recht gesprochen werden soll; es ist eine Anweisung nicht für den Einzelnen, nach welcher er sein Thun und Lassen einrichten, sondern für die Obrigkeit, nach welcher sie das Recht im einzelnen Falle finden soll.

Legislation, then, is merely interpretation of the law in the form of instructions to officers endowed with state authority. These instructions were in earlier times given solely by the monarch. In later days popular feeling has demanded that from time to time the interpretation of the law should be shared in by bodies of popular representatives. In some cases it has been sought to make this function exclusive in the representative body. But there must always remain a vast sphere of activity in which discretion must be exercised by the so-called executive authority. This authority then must declare what is law and must be guided in its declaration by the same principles that guide the so-called legislature. The legislative and executive branches of government, in short, are only distinct organs for the same general purpose—to voice the jural consciousness of the people of the state. Statute and ordinance must alike harmonize with this consciousness. If the two come at any time in conflict, popular feeling must decide between them. Even where the constitution of a state intends to give all ordinance power as well as all statute-making power to the representative body, there come occasions when the executive feels bound to disregard a statute—to interpret, in other words, the popular consciousness for himself. Hence indemnity laws, as in Great Britain and the United States.

While there seem to be evidences in places of some confusion in the author's mind due to the ambiguity in the word *Recht*, yet the doctrine presented in the book is on the whole sound and satisfactory. In maintaining the rights of the administrative organ, the author by no means identifies it with the state; he merely feels unable to shut his eyes to the part played in the development of every state by authority.

Die Obrigkeit ist auch nur die staatsbildende Kraft, nicht für sich der Staat: dieser ist die unter der Obrigkeit geeinte Gesamtmacht nicht einer leeren Personenmehrheit, sondern eines von eigenartigem, Sittlichkeit und Recht bildendem Gemeingefühle durchdrungenen Volksthums. . . . Wie die gesunde Staatsbildung von oben ausgeht, aber ihre Vollendung erst findet wenn die Obrigkeit mit dem Rechtsgefühl der Unterthanen sich zu einer sie selbst bindenden Ordnung zusammenschliesst, so geht die gesunde Rechtsbildung von unten aus, aber findet ihre Vollendung erst in dem rechtsetzenden Walten der Obrigkeit. [Page 103.]

There is good history and good political science in this passage.

*Studien zum Aeltesten Familienrecht.* Erster Teil: *Mutterrecht und Vaterrecht.* Erste Hälfte: *Die Grundlagen.* Von Dr. LOTHAR VON DARGUN, Professor an der Universität Krakau. Leipzig, Duncker & Humblot, 1892.—8vo, 155 pp.

The material for the comparative study of legal evolution has become immense. The earliest conditions of civilized nations—or at least the conditions which apparently obtained before their civilization—have been elucidated by philological and institutional research, and the customs of uncivilized or semi-civilized tribes and peoples in all parts of the world have been more or less intelligently described by numerous observers. In the field of the family the material seems relatively complete. The more recent investigations have ceased to present any forms of family organization or systems of determining kinship that are really novel: they furnish us only with fresh examples of forms and systems already known. The time seems ripe, therefore, for more careful and profound study of the whole subject. This is the work undertaken by Professor von Dargun; and it is carried out in the first instalment of his treatise with unusual keenness of analysis and with interesting results.

In his view the differences of opinion still existing as to the primitive type of the human family and the successive stages of its evolution are due to the failure of most writers to distinguish between power and kinship. These authors who, like Letourneau and Starcke, discover in the lowest stages of social development a distinct supremacy of the man over wife and children deny the priority of mother-right or relationship through the female line. Those, again, who find clear traces of the general priority of mother-right deny the antiquity of the patriarchate. According to von Dargun, there is here a confusion of things which are indeed causally related, but which are nevertheless distinct; and a general agreement will certainly be attained as soon as the scientific world learns to separate power and kinship and to admit that paternal authority may exist without agnatic relationship, and mother-right without matriarchal developments.

Without denying or affirming the possible priority of hetairism or absolutely indiscriminate sexual relations, the author maintains that the earliest demonstrable organization of the family is about and under the man.

We picture to ourselves the protoplasm [*Urzelle*] of the family . . . as follows. Within the . . . horde [*Menschenrudel*] . . . smaller separate

groups are formed, the central point of which is usually a man. This man puts himself in possession of one or more women ; commands their services of whatever nature ; and disposes both of them and of the children borne by them, whether the latter are really his children or not. [Pp. 38, 39.]

But this power is not yet a true patriarchy. It is merely a *de facto* power. It exists only so long as it is exercised. If the man puts away his wife, his marital and paternal power is at an end. When the children grow strong enough to shift for themselves, they are no longer in any sense his children. They may even ignore their relationship to each other. The idea of kinship is of later development.

From this primitive power of the man, as it becomes more durable and hardens into the patriarchy, *may* proceed directly a theory of agnation or kinship through the male line. Or kinship *may* conceivably be recognized in both lines. But neither of these things commonly happens at the outset. Even where paternity is certain, which is far from being commonly the case, the bond of blood between mother and child is far more obvious to the primitive mind than is the bond between father and child. The earliest system of kinship is therefore almost always uterine. With the full development of this system there may appear matriarchal ideas and usages: rarely in the form of a real household authority of the granddame; more often in the form of a right of the mother's brother or her maternal uncle to protect her and her children against the husband and father. But exclusive mother-right, as a system of kinship, is demonstrably compatible with exclusive marital and paternal power.

But as the recognition of uterine kinship tends to produce matriarchal ideas, so conversely the exercise of paternal power tends to produce a new theory of kinship; and this latter tendency is far more energetic. Mother-right sporadically develops into matriarchy, but patriarchy, once firmly established, always tends to break down mother-right and to develop agnatic relationship. The patriarchal household is indeed based on power alone, and the actual paternity of the children is at first immaterial. But in proportion as marital authority becomes more complete and durable, paternity becomes more certain, and the new theory of kinship grows in importance. Men cease to say "The cock lays no eggs," and begin to use similes of the seed and the soil. Still, the paternal power and the new agnatic kinship remain essentially juristic conceptions. The father is father, not on physiological grounds, but because of his right over the mother. There is thus no immediate breach with the theories of mother-right, but rather a new departure from its recognized principles.

So far von Dargun. His theory is in itself plausible, and it is supported by a great array of evidence. But it seems incomplete. Why, we may ask, does father-right so often thrust mother-right partially or completely aside? How did the Romans, for example, come to adopt agnation as the exclusive system of legal kinship? Why have other peoples given preference to the male line in inheritance? These are the facts which von Dargun's explanations do not explain. From his presentation of the causes of father-right we should expect the immediate appearance of *Elternrecht* or the modern system of kinship, which attributes equal importance to the male and female lines of descent. Other writers have found the missing explanation in the influence of the *gens* or clan. As Post, for example, has pointed out, the clan is based on the theoretic unity of blood, while the family is regularly based on the union of different bloods. With its theory the clan cannot possibly recognize more than one kind of kinship, and its system must be either exclusive mother-right or exclusive father-right. It is therefore the clan that really determines kinship. Von Dargun hardly alludes to this most important theory. That he does not accept it, however, is indicated on page 45, where he clearly assumes that clan organization is not the cause but the result of family organization.

In tracing the evolution of the patriarchy and of father-right the author rightly lays much stress upon wife-purchase, but he draws what seems to be an untenable distinction between the legal results of wife-capture and wife-purchase. In his opinion wife-capture creates only a *de facto* power, while wife-purchase creates a legal right, first over the wife and secondarily over her offspring. This is a distinction which cannot have been felt in really primitive society. That authority over wife and children develops on the same lines with property right in general; that in fact marital and paternal rights are originally indistinguishable from other property rights, — this von Dargun himself recognizes. But simple appropriation, recognized and respected by the community, is the original basis of all property right; and it is only where some sort of property right is established that sale is conceivable. In the evolution of the family, wife-purchase from the girl's father implies that paternal rights are already recognized, for otherwise the father has nothing of which he can dispose. Von Dargun might indeed respond that he disposes of a *de facto* power; but a *de facto* power which is alienable is indistinguishable from a right. Paternal authority therefore antedates wife-purchase; and von Dargun's statement that wife-capture is not a direct cause



of father-right, but only prepares the way for it, is demonstrably illogical. The fact that *after* wife-purchase has become usual, wife-capture within the tribe does not establish paternal authority over the children, is perfectly intelligible: at this stage of social development wife-capture becomes a distinctly wrongful act which cannot create rights; it becomes wife-stealing. But this fact does not sustain the contention that wife-capture could not establish marital and paternal rights at a time when the mode of appropriation was regarded as right and honorable. Here as elsewhere the author's argument is incomplete because he has postponed, for the present, all discussion of endogamy and exogamy.

The book goes far to clarify the discussion of a number of very complicated and difficult questions, and its further instalments will be awaited with interest.

MUNROE SMITH.

*Alt-Arisches Jus Civile.* Erste Abtheilung. Von Dr. B. W. LEIST, Professor an der Universität zu Jena. Jena, Gustav Fischer, 1892. — 8vo, 531 pp.

Professor Leist has resumed, with somewhat tedious restatements and repetitions, the line of investigation pursued in his *Gräco-Italische Rechtsgeschichte* (1884) and his *Alt-Arisches Jus Gentium* (1889). His attempt is to reconstruct the common Aryan beginnings of all Indo-Germanic legal systems by a comparison of Hindu, Greek and Roman institutions, with occasional excursions into Armenian, Persian, Celtic and German usages and laws. The common Aryan basis, as he shows, is rather religious and moral than legal: it is the divinely ordained system which the Hindus called *dharma*, the Greeks *themis*, and the Latins *fas*. It is this common divine law which Professor Leist rather oddly calls *jus gentium*. The term *jus civile*, on the other hand, he uses in a strictly Roman sense, to designate the local systems of law which were worked out in the ancient city-states of Greece and Italy. *Aryan Civil Law* is therefore, according to his own theory, a misnomer, for the Aryans never had a common civil law. All that they had in common was a religious law, in which, however, were imbedded many germs of the various civil laws which were developed independently centuries after their separation into distinct nationalities.

The present work, which will embrace two more volumes, is primarily an attempt to reconstruct the Roman *fas*, of which our knowledge is unfortunately very scanty, by the aid of *dharma* and

*themis*, and to show the Aryan origin of much of the Roman *jus civile*. The present volume deals mainly with the first of these problems, and therefore contains almost no civil law, Roman or Aryan. The later volumes will treat respectively of the "development of the Roman *civilis ratio*," and of the Roman scheme of legal acts and legal sanctions. In them, the author expects to derive much assistance from the older city-laws of Greece, and particularly from the newly discovered law of Gortyn.

In this work, as in its predecessors, Professor Leist sharply distinguishes his line of investigation — which, as he insists, is purely legal-historical — from the broader field of research which is commonly called comparative legal science. He is not concerned with the evolution of human customs and laws as a branch of ethnological or sociological science, but with the development of Aryan law as a matter of institutional history. His anxiety not to be included among the comparative legal scientists is due to distrust of their methods and disbelief in the correctness of their conclusions. He denies, for example, that there is any trace in Aryan law of primitive mother-right, and he obviously disbelieves in its existence at any period in any decently moral community. On the other hand, he does not find that agnation is the original Aryan system of kinship, but holds that relationship was traced through both lines, the male and the female. He therefore asserts, for Aryan law at least, the priority of that system which most students of comparative legal history regard as the most modern. On their part the adherents of the comparative school assert that much of Professor Leist's work is vitiated by the erroneous assumption that the *dharma* of the Sūtras is primitive Aryan law. They maintain that the social relations of India, at the period of the Sūtras, had reached a comparatively advanced stage of development, and that the Sūtras themselves represent centuries of sacerdotal construction and interpretation which practically amount to legislation.

In the forthcoming volumes of *Aryan Civil Law* Professor Leist will return to the field in which he did his earliest and best work, and in which he is recognized as an authority — the field of Roman legal history. That much light may be thrown upon its dark places by a comparison with other systems, and in particular by the analogies of Greek civil law, will not be disputed — least of all by his dearest enemies, the comparative legal scientists.

M. S.

## BOOK NOTES.

IN *A Brief History of Panics and their Periodical Occurrence in the United States*, by Clément Juglar, "Englished and edited" by DeCourcy N. Thom (Putnams, 1893), the translator has taken a few chapters from the French original, which is of wider scope, and given a very free rendering, interspersed with his own sentiments. The value of the extract is not very apparent, for so far as the United States is concerned the story has been told repeatedly, and Mr. Juglar's very fragmentary account neither adds to our knowledge nor gives as clear a statement as is to be found in several other works. As a popular account of the evils of overtrading, the *Brief History* may serve its purpose, but to the student it will not be of much use.

A former high official of the United States, Mr. W. L. Trenholm, modestly states that his work on *The People's Money* (Scribners, 1893) is meant not for the learned, or for those who are versed in economic literature, but for the large number of plain people who desire to get some practical ideas on the subject. The work is pleasantly and clearly written, and contains a good statement of some of the main principles of monetary science. But even the fact that the book is written for plain people does not excuse such statements as that John Law originated the idea that articles used as money must have a value in barter, or that the so-called Gresham's law was *first* pointed out by Sir Thomas Gresham, or that utility is a physical relation and value an abstract relation. The author avoids the discussion of bimetallism for the curious reason that he desires to consider only "those principles which take their rise in the nature of things."

In a convenient little volume entitled *State Papers and Speeches on the Tariff*, and published by Harvard University (Cambridge, 1892), Professor Taussig has collected some of the chief documents bearing on the free-trade discussions up to the middle of the century. The book contains such familiar and valuable papers as Hamilton's Report on Manufactures, Gallatin's Memorial, Walker's Report, and Clay's and Webster's speeches in 1824. This publication in the present form will be of no slight aid to students and teachers.

Mr. George Clare has shown that Goschen has not spoken the last word on foreign exchange, for in *The A B C of the Foreign Exchanges* (Macmillan, 1893) he has not only put together what is, on the whole, the best primer of the subject in existence, but he has supplemented in several important points the larger work of Goschen. Mr. Clare tells us that he gained his experience at first hand, and he writes primarily for the business man. The resulting necessity of clear statement and practical illustration makes the little work peculiarly valuable for the student as well. With its help many of the perplexing problems of every day occurrence in banking and commercial practice can be easily solved. So *e.g.* the problem of the silver exchanges with India, and the different meanings of "high" and "low" rates in different countries.

Mr. Arthur Raffalovich continues his survey of the financial condition of the important commercial countries, begun in 1891, in *Le Marché Financier en 1892* (Paris, Guillaumin, 1893). A preface discusses the rôle of speculation in general, and gives an historical sketch of the legislation against futures. The body of the book takes up in turn the stock exchanges of Paris, London, Berlin, New York and Vienna, and the general condition in Italy and Russia. We also note a full and valuable account of the proceedings of the Brussels International Monetary Conference, to which the author was a delegate. An appendix deals with the projected French tax on stock-exchange operations. The notices in general are timely and convenient for reference.

In December, 1892, as the result of a call issued by President Angell, the Michigan Political Science Association was formed at Lansing. Both at that meeting and at the second session, held in February at Ann Arbor, a number of papers were read, most of which have now been collected in the *Publications of the Michigan Political Science Association*, No. 1 (May, 1893). The volume contains two interesting essays by Judge T. M. Cooley, the one on "State Bank Issues in Michigan," the other on "Federal Taxation of State Bank Issues." There are also included an account of the organization and first two meetings of the association, the address of the president, Judge Cahill, and papers and discussions on the bank-note circulation, the Interstate Commerce Act, and the suggested election of United States senators by popular vote.

Charles Frederick, Margrave of Baden, has always been famous in the annals of political economy as the only potentate who attempted to put into practice the Physiocratic theory of the single tax. His

interesting correspondence with the leader of that school has just been published in two volumes by the Baden Historical Commission, under the title: *Carl Friedrichs von Baden Brieflicher Verkehr mit Mirabeau und Dupont*, edited and provided with a preface and introduction by Carl Knies (Heidelberg, Winter, 1892). The correspondence is entirely in French, and throws some light on several of the obscure points in the history of the Physiocratic movement. The preface and introduction by Professor Knies, the Nestor of the historical school in Germany, will be a welcome proof to his former students that his mind has not lost the acuteness of former years. The introduction gives a masterly sketch of the fiscal and economic conditions which led at once to Physiocracy and the French Revolution. Mirabeau and Charles Frederick are treated at some length, but Dupont has been so fully discussed in the recent work of Schelle (see *POLITICAL SCIENCE QUARTERLY*, IV, 176, March, 1889) as to render any further treatment unnecessary.

The latest number of Elster's *Staatswissenschaftliche Studien* is a doctor's dissertation of Albert Hahl, *Zur Geschichte der Volkswirtschaftlichen Ideen in England gegen Ausgang des Mittelalters* (Jena, Fischer, 1893), written under the guidance of Professor Schanz. The author has taken eleven essays, from the middle of the 15th to the middle of the 16th century, and has classified their contents according to the various subjects of economic interest of the time. It cannot be said, however, that Dr. Hahl has really added much to our knowledge. We simply have in bare outline what Ochenchowski, Schanz, Cunningham (only the first edition of whose work the author seems to know) and Ashley have told us much more fully. The essay will nevertheless be interesting to students of the history of economic doctrine.

Starting out with a bias in favor of government ownership of land, Mr. Harold Cox was led by further study to question its expediency. In *Land Nationalization* (London, Methuen & Co., 1892), one of the series on Social Questions of To-Day, he has attempted to discuss some of the arguments involved. The bulk of the work is a popular condensation of the history of land owning and land taxes in England. The author's original contributions to the general subject are three in number: a discussion of the incidence of local rates, which is not very penetrating, and which concludes with the demand for a local income tax; an examination of Henry George's scheme, which is pronounced illogical as well as an aggravation of the evil; and the suggestion that before proceeding in the direction of state purchase

of land, the existing system of individual ownership be improved to the uttermost, mainly through endowing the public with an extended right to use the land for purposes of recreation.

In another volume in the same series, entitled *A Shorter Working Day*, Messrs. R. A. Hadfield and H. de B. Gibbins have sought to supplement Webb & Cox's *Eight-Hour Day* by bringing the history of the movement in England to the close of 1892. Mr. Hadfield is a large employer, who gives an account of some practical trials, but whose other remarks are nothing but a repetition of his colleague's views. A valuable chapter is inserted on the Australian experiments, taken in great part, with acknowledgments, from a German monograph of Dr. Stephan Bauer. Some of the inferences are not very valuable, as *e. g.* the statement (page 29) that the actual working day in the middle ages could not have been more than eight or nine hours, because More, in his *Utopia*, puts the ideal working day at six hours! This is neither logic nor history. The authors, although enthusiastic, do not regard the eight-hour day as a panacea. To them it simply means an hour or two more leisure for the workman, — and that is enough.

The *Almanach de la Coopération Française* (1893), published by the *Comité de l'Union Coopérative des Sociétés Françaises de Consommation*, is a *multum in parvo* for coöperators. The introductory matter and two of the biographies included in the book are by Professor Charles Gide, and eminent men are among the contributors. In place of the names of patron saints of an ordinary calendar there have been substituted those of "the twelve apostles of coöperation." Four of these are French, namely, Fourier, Buchez, Leclaire and Godin. Four are English — Owen, Maurice, Vansittart-Neale and Holyoke. Two, namely, Schultze-Delitzsch and Raffeisen, are from Germany; and from Belgium and Italy are selected Vigano and Caesar de Paepe. There will be little fault found with the selection. The *Almanach* contains a list, complete to the present date, of French coöperative societies, and a catalogue of societies of other countries. It traces the history of the chief experiments in France, and gives the more important general statistics of the coöperative movement.

A number of suggestive discourses and essays, by Professor William Cunningham, have been collected in a slight volume bearing the title: *The Path Towards Knowledge; Discourses on some Difficulties of the Day*. Among the difficulties are those connected with the relations of marriage to the law of population, with socialism, with the ethics of money, charity, education, faith, *etc.* Of the

author's qualifications to deal wisely with the economic aspects of these questions, it is not necessary to remind the readers of this journal; and we need add only that he here deals with them avowedly "from the standpoint of one who has tried to make the Christian faith the guide of his own life, who has found that it helps him to see more clearly in many perplexities, and who therefore believes that it will prove a true guide to others if they will follow its leading."

The standard of Sonnenschein's Social Science Series has not been elevated by the addition of H. M. Hyndman's *Commercial Crises of the Nineteenth Century* (1892). Where the work is not made up of extensive and very bad translations of uncredited excerpts from Wirth's *Geschichte der Handelskrisen* it presents a fragmentary description of the symptoms which have attended the chief commercial panics of the century. But even here the facts have been either tinged or distorted by the author's well-known socialistic views. After subjecting to a destructive criticism the various theories that have been advanced as explanations of crises, he concludes that such phenomena are inherent in the very existence of "the capitalist system of production;" that they arise from "an antagonism between the social form of production and the individual form of appropriation of commodities." The solution which he suggests is nothing more nor less than socialism pure and simple, attempt to disguise it as he may by the terms "socialization," "social organization," "organized coöperation."

*Factory Act Legislation* (London, Unwin, 1892) is a Cobden Club Essay by Victorine Jeans. It sketches briefly the history of the acts and shows how they have been vindicated both economically and socially. Neither production, wages nor profits have been reduced. The introduction of better methods and improved machinery has been stimulated, while the laborer has gained shorter hours and better conditions of working. The book gives a qualified approval of the eight-hour day.

Two important publications on the subject of "officialism" (*cf.* POLITICAL SCIENCE QUARTERLY, VIII, 58, March, 1893) have recently appeared. One is the *Further Report of the Special Committee of the Council of the Incorporated Law Society on Officialism*, the other the *Report on Companies' Liquidation* by the inspector-general of that department of the Board of Trade. The report on officialism is a review of the subject to date under four heads: (1) as to officialism generally; (2) as to the bankruptcy and winding-up department; (3) as to compulsory schemes of the land-registry office; (4) as to

the proposals for the establishment of a public-trustee department. The *London Times*, in commenting on the report, says: "Those who have described the Incorporated Law Society as the best organized and most intelligent trade union in the country, will point to this pamphlet as a fresh proof of its zeal for the interest of its members." The report of the inspector-general, on the other hand, presents the side of officialism so far as it concerns the winding-up of joint-stock companies. His figures are startling. During the year 754 companies were wound up with a loss to stockholders of about £20,000,000, and of the companies so wound up apparently the majority had not been in existence over three years. The inspector-general declares that of these companies there is scarcely one of which it could be said that the objects of the company were reasonable, that its promotion and management were honest, and that its failure was due chiefly to misfortune.

In a huge volume of over a thousand pages, entitled *The Story of our Post Office* (Boston, A. M. Thayer & Co., 1893), Mr. Marshall Cushing has collected a prodigious amount of interesting matter connected with the organization and working of what he calls "our greatest government department." Every possible phase of the subject receives full treatment. Although the popular character of the work is manifest in the numberless photographs and anecdotes, readers of a more serious vein will find it replete with valuable information.

Every year sees the appearance of handsome, substantial books, with which no fault can be found except that they add nothing to our knowledge and are written with undue pomposity. They doubtless serve a useful purpose; they appeal to that large body of prosperous persons who regard books as furniture, and who like to be impressed by an author's long sentences and fine words. This is the public addressed by Mr. W. Carew Hazlitt's ponderous volume on *The Livery Companies of the City of London* (London, Sonnenschein; New York, Macmillan; 1892). Besides the coats of arms of the various companies, some lists of 17th century pamphlets and broadsides, and a few engravings of buildings and plate, there is hardly anything to be found in it which is not in the *Report of the Livery Companies' Commission* (1882), Herbert's *Livery Companies*, and a few other easily accessible authorities. The author is an antiquary, it appears; he certainly is not a historical scholar. His conception of past conditions is of the vaguest; his style is awkward and obscure; and he gives no references. It would be



useless with a work of this kind to enter into detailed criticisms which the "general reader," who is alone likely to look at the book, would not care for, and which the serious student would not want.

M. Levasseur's *La France et ses Colonies* (Paris, Chas. Delagrave, 1893) reaches completion with its third volume, devoted entirely to the colonies. The whole work is an exhaustive description of the physical geography and the economic and political institutions of France and its possessions, based on natural science, history and statistics. While for the most part an encyclopædia of facts, the work contains some interesting generalisations as to the influence of soil, climate, topography, *etc.* upon the development of a nation. France is said to be the third colonial power in the world, its domain covering eight million square kilometers, with a population of seventy-three million persons. This includes, however, five and one-half million square kilometers where French influence is *nulle* and 700,000 square kilometers where her influence is not firmly established. A copious index makes the book very valuable as a gazetteer.

*Del Patronato degli Emigranti in Italia e all' Estero* (Rome, 1893), by Dr. Egisto Rossi, is a valuable pamphlet published by the Italian Geographical Society, giving an account of the laws and institutions for the regulation of emigration and immigration in the principal countries of the world. The object of the study was to devise means for regulating and protecting Italian emigration, which has lately become so important. The author is admirably qualified for his task by his previous work for the geographical society in this line and by his intimate acquaintance with the United States. The present essay contains a great variety of information useful to the student and might well be translated into English. On page 49 a slip of the pen ascribes 6,000,000 immigrants to the United States, 1820-1890, from "England." It should be "Great Britain."

In this connection, the *Arrivals of Alien Passengers and Immigrants in the United States from 1820 to 1892* (Washington, 1893), a part of the quarterly report of the bureau of statistics in the Treasury Department, series of 1892-93, deserves notice as an exceedingly convenient summary of the statistics for the United States. Besides the usual tables of immigration the report contains special statistics of the amount of money brought by immigrants, the number of passengers departing from the United States, the distribution of the foreign born in the United States, immigration into other countries of America and Australasia, 1820-1892, and a reprint of our immigration laws and regulations, including the act of March 3, 1893.

To the convenient *Jahrbuch für das Deutsche Reich* we have now to add the *Statistisches Jahrbuch der Schweiz*, published by the statistical bureau of the federal Department of the Interior at Berne. It renders easily accessible the statistics of Switzerland. Equally welcome is second volume of the *Statistisches Jahrbuch Deutscher Städte*, (Breslau, 1892), edited by Dr. Neepe, with the co-operation of Böckh, Hasse, Edelmann, Würzburger and others. It contains statistics of forty-three out of forty-seven German cities having over 50,000 inhabitants each. The information is arranged under twenty-one heads, each of which was worked out by a competent official through special schedules sent to each city. Thus uniformity and completeness were secured to a very high degree. That such a method was possible speaks well for the efficiency of the municipal statistical bureaux and for the scientific zeal of their officers.

President Andrews of Brown University has performed a good service for historical science in this country by publishing an excellent translation of J. G. Droysen's *Grundriss der Historik* under the title, *Outline of the Principles of History* (Ginn & Co., 1893). The translation is made from the last German edition and includes, in addition to the *Outline*, the author's criticism of Buckle and his articles on "Nature and History" and "Art and Method." Prefixed to the translation is also a biographical sketch of Droysen by Dr. Hermann Krüger. The treatise itself was in form scarcely more than lecture notes. The translator has made it clearer and more readable by expansion and occasional paraphrase. Droysen's utterances are as profound and sometimes as obscure as those of his master, Hegel. But this little book contains as much true and inspiring philosophy as can anywhere be found packed into the same space. To its author, history is nothing less than the moral evolution of humanity; in its material it is the record of that evolution. Everything which concerns this development belongs within the domain of history. It is investigation by means of the discovery and criticism of the sources, whatever they may be, and by thought or interpretation. The last is the most important part of the process, and success in it makes the true historian. It depends in the largest sense on the moral endowments of the investigator, out of which arises his capacity to sympathize in and so to understand the experiences of other men and times. In the local and partial he must always be seeking the general. History in the true sense is universal. The historian must be filled with the idea of human progress. Though untiring in his search for truth, he should be

an uncompromising idealist. Those who look to Droysen for a defense of the notion that history is an exact science will be disappointed.

Mr. Caleb William Loring was much shocked a few years ago by Henry Cabot Lodge's opinion that Hayne had the right of the argument in his famous debate with Webster. Mr. Loring has accordingly published, under the title *Nullification and Secession* (Putnams, 1893), an account of various facts in our history which he thinks show that Mr. Lodge was wrong. The book contains nothing that is new to students of the constitutional history of the United States. It is a good "old line Whig" document, teeming with ideas that were prominent in the three decades before the Civil War. Mr. Loring employs in his preface the overworked Pallas Athene comparison to describe how "the nation . . . sprang to life from the constitution." With that conception of the way nations are born, almost anything can be proved as to our political system. Mr. Loring brings forward enough incidents of our history to prove that there have been many eminent statesmen who wished the constitution to be construed as a paramount national authority, and many others who wished it not to be so construed. He thinks the former were "right," though he never indicates a consciousness of a possible distinction between the moral and the legal significations of the term.

It is hard to speak too highly of the plan and purpose of three works issued by the Statistical Publishing Association, of Washington, and edited by Thomas Hudson McKee. The *Manual of Congressional Practice* presents clearly and in very convenient form for reference pretty much everything that the average student wants to know about the actual process through which legislation is accomplished by Congress. Not only the codified rules of the houses, but the unwritten customs are explained and illustrated, and the whole course of a measure is traced, from its introduction as a bill to its appearance on the statute book, with *fac simile* reproductions of many of the forms which it assumes in the interval. The *Manual* contains also much other information relative to the work of Congress which is not readily accessible elsewhere. In *Inaugurals, 1789-1893* and *National Platforms of All Political Parties, 1789-1892*, Mr. McKee has compiled matter which the political historian and the social philosopher alike will be pleased to find in this form. The *Inaugurals* contains a considerable amount of "padding" in the form of "Historic Notes," which are in some cases rather ridiculous.

Mr. Spencer Walpole, in his interesting volume entitled *The Land of Home Rule* (Longmans, 1893), gives an outline of the history of the Isle of Man from the earliest times till the present. Relying on original authorities, he discusses the origin of the population, the institution of the Tynwald, or open-air court, during the Norse period, the Scotch conquest and the history of the island under the Stanley family. Among other things, Mr. Walpole shows (page 113) that in Elizabeth's reign, in spite of the fact that the Manx retained their old institutions intact and that their ruler bore the title of king, the queen took possession of the island pending a dispute over the succession. James I regranted it, and Parliament passed a private act confirming the grantee in his possession. The act of 1765, by which the Isle of Man was revested in the crown of England, was passed in virtue of the supremacy of Parliament over all English dominions. Persistent smuggling provoked the measure, and its passage was one of the achievements of the Grenville ministry. But the policy thus inaugurated has not resulted in the full incorporation of the Isle of Man into the Kingdom of England. It sends no representative to Parliament; it retains its Tynwald, though the "keys," or selected members, have become elected representatives, and the governor's council forms a sort of upper house of the legislature. The judicial power of the "keys" has gone to a regularly organized court. The governor, appointed by the crown, exercises large and increasing authority, while Parliament has confined its legislation almost wholly to finance and the regulation of trade. Land tenure and ecclesiastical jurisdiction have long since been reformed, the rate of taxation is low, and the islands are prosperous under their system of home rule.

M. Spuller's *Lamennais* (Paris, Hachette, 1892) is an admirable study of the career of that erratic genius who so dazzled France, and indeed all Europe, in the thirties. The peculiar traits of Lamennais' character are most skillfully brought out by the author, and in his treatment of the environment in which the *abbé* lived, he throws much light on the political and religious thought of the time. M. Spuller's work is purely objective and historical, and it is possible that this accounts for the absence of any comment on the obvious connection between the liberal ideas entertained by Lamennais before his final breach with Rome, and those of the recently developed Catholic Republican party in France.

The *Revue Internationale de Sociologie* has been established to reflect and further the progress of thought in social studies that have become

fairly distinguishable from the older sciences of economics, law and politics, and are attracting many specially qualified investigators whose work will be materially aided by an organ of communication. It is ably conducted by M. René Worms, and the publishers are A. Giard and E. Brière, Paris. The list of contributors includes most of the well-known French, German, English and American writers on demography, practical social problems and social philosophy. The articles have a rather wide range thus far, and the *Revue* would increase its usefulness by confining itself more closely to subjects that are neglected by other special periodicals. The departments of correspondence, book-reviews and notes promise well. We welcome the *Revue* and hope that it will do much to integrate and organize the sociological literature which of late has been growing rapidly, especially in Belgium and France.

Otto Mühlbrecht's useful *Wegweiser durch die Neuere Litteratur der Rechts- und Staatswissenschaften* appears this year in a revised and greatly enlarged edition. (Berlin, Puttkammer und Mühlbrecht, 1893.) Unlike the *Allgemeine Bibliographie* of law and political science published monthly by the same firm, the *Wegweiser* does not aim at completeness: it consists of selected titles, but it includes about 34,000. As far as German works are concerned, the selection is excellent; for other countries it is not so good, and for England and the United States it is very defective. The scheme of classification is a good one; but in assigning a book to its proper class it sometimes happens that the back is regarded more than the inside—so, for example, Leist's *Alt-Arisches Jus Gentium* is absurdly placed under "Völkerrecht" instead of "Rechtsgeschichte." But the admirable index, in which the same work is often entered three or four times, atones for such errors.

A very attractive organization of our state bars and benches is proposed by Mr. John A. Wright, of the San Francisco Bar Association, in a little book entitled *How to Get Good Judges* (San Francisco, The S. Carson Co., 1892). He proposes, in effect, that the bar of each state be made a self-governing guild, divided into local chapters. Each chapter is to be governed by an elected "Council of Discipline." These councils, united in general assembly, are to determine (under the general law of the state) the requirements for admission to the bar, and to formulate a code of professional ethics. The single councils are to sit as courts for the trial of members of the bar charged with unprofessional conduct. Service on the councils is to be made compulsory. From these councils, which will presum-

ably represent the very best elements in the bar, all the higher judges are to be appointed. Vacancies in the highest courts of original jurisdiction (the superior courts) are to be filled by popular election, but only members of the councils are to be eligible. Vacancies in the highest appellate court (supreme court) are to be filled by promotion, judges of the superior courts being alone eligible, and the choice being made by a convention of all these judges. At the same time the judicial tenure is to be during good behavior, with provision for retirement at a certain age and a pension; and judicial salaries are to be made somewhat more nearly commensurate with the earnings of corporation lawyers. These are the most salient points of Mr. Wright's plan. It is worked out carefully in its details,—even to the transitional provisions which would be required for its immediate introduction in California. It is, we fear, too good a plan to be adopted; and in this sense only we are forced to call it utopian.

# POLITICAL SCIENCE QUARTERLY.

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## THE CONCENTRATION OF WEALTH.

WHAT the distribution of wealth is among the people has been an elusive problem, and can now receive only a tentative determination. Little beyond empirical and deductive methods have been at command, with slight reinforcement from statistics, and dependence on these methods is open to the objection that bias of opinion has large room for effect on conclusions. At the present time no direct attack on the problem can be made except by estimates of individual wealth, and thus far these have been based chiefly on assessments of property and incomes and the reputed amounts of large fortunes, with collateral aid from deposits in savings banks and the like. So much is assumed to be known and so little is really known in regard to the amount of the wealth of the rich, that a direct estimate of their wealth involves a large margin for error. It is intended in this article to avoid most of this common field of estimation and to direct attention to the wealth of the poorer class, — a course which is now for the first time made possible by statistics recently published by the census office. With the facts here disclosed it is believed that a more accurate estimate can be made as to the wealth of the poor than can be attained by subtracting the supposed wealth of the rich from the total wealth of the country. The wealth of the richer class may better be determined by subtraction.

The census office has published the results of its investigation of farm and home proprietorship in twenty-two states and territories. In the case of every family the census recorded

|   |                        |
|---|------------------------|
| 5,159,796 home-hiring families, worth \$500 above debts of indefinite amount. . . . .   | 2,579,898,000          |
| 720,618 families owning incumbered homes worth less than \$5,000, deducting incumbrance and other debts of indefinite amount, and allowing \$500 for additional wealth. . . . . | 1,142,531,550          |
| 1,764,273 families owning free homes worth less than \$5,000, allowing \$2,000 for additional wealth above debts of indefinite amount. . . . .                                  | 6,749,076,593          |
| <hr/> 11,593,887 families worth. . . . .  | <hr/> \$17,356,837,343 |

Otherwise stated, ninety-one per cent of the 12,690,152 families of the country own no more than about twenty-nine per cent of the wealth, and nine per cent of the families own about seventy-one per cent of the wealth. The chief elastic elements of the estimate are the amount of wealth that is credited to each family in addition to its farm or home and the amount of debt with which the family is charged above incumbrance. Opinions will vary in these matters, but the variations will need to be extreme before the preceding conclusion can be considerably changed. In forming an opinion, it should be borne in mind that only the cheaper of the owned farms and homes are represented — those whose value, without regard to incumbrance, is in no case as much as \$5,000, and averages about half that amount.

Among the 1,096,265 families in which seventy-one per cent of the wealth of the country is concentrated, there is a still further concentration, which may be indicated by taking account of the wealth of the very rich. The New York *Tribune's* list of 4,047 millionaires affords the best basis for this. Here the unknown quantities are of such magnitude that widely divergent estimates may readily be made. In Mr. Thomas G. Shearman's estimate of the wealth of millionaires, partly based on the assessment of Boston, and published in the *Forum* for November, 1889, the average for the class is set at



about two and a quarter millions ; but it would seem as if Mr. Shearman had considerably overestimated the number of millionaires worth less than \$3,750,000 apiece, and, if so, his average is too small. Without going into details, the conclusion adopted in this article is that the 4,047 millionaires are worth not less than ten or more than fifteen billions of dollars, say twelve billions, or about one-fifth of the nation's wealth. This gives an average of about \$3,000,000.

We are now prepared to characterize the concentration of wealth in the United States by stating that twenty per cent of it is owned by three-hundredths of one per cent of the families; fifty-one per cent, by nine per cent of the families (not including millionaires); seventy-one per cent, by nine per cent of the families (including the millionaires); and twenty-nine per cent, by ninety-one per cent of the families.

About twenty per cent of the wealth is owned by the poorer families that own farms or homes without incumbrance, and these are twenty-eight per cent of all the families. Only nine per cent of the wealth is owned by tenant families and the poorer class of those that own their farms or homes under incumbrance, and these together constitute sixty-four per cent of all the families. As little as five per cent of the nation's wealth is owned by fifty-two per cent of the families, that is, by the tenants alone. Finally, 4,047 families possess about seven-tenths as much as do 11,593,887 families.

This result seems almost incredible. It is not in accordance with appearances, and if the distribution of well-being is an indication of the distribution of wealth, some great mistake has been overlooked. Yet it is probable that the statement is approximately correct ; otherwise, extravagant allowances of wealth must be made to the poorer families of the United States. If a recomputation should give one-third of the wealth to the 11,593,887 families — and it can hardly do more than that, — still sixty-seven per cent of the wealth is owned by nine per cent of the families.

The effect of the method herein adopted is to place about seventy-one per cent of the wealth of the country in the hands

of the owners of farms and homes worth \$5,000 and over. Excluding millionaires, the average wealth for the class becomes about \$28,000, which at first seems improbable for as many as 1,092,218 families, or about nine out of every hundred. But the improbability disappears when it is known that the average family wealth, still omitting millionaires but including all other families, is about \$3,800; so that about \$380,000 must find owners among each one hundred families, of which fifty-two are tenants; twelve, burdened with incumbrances, have farms and homes of the cheapest sort; twenty-eight have farms or homes that, while free from incumbrance, are worth but a few thousand dollars each; and eight have farms and homes each worth \$5,000 and over.

Collateral support for the foregoing conclusions is found in the probability that more than one-quarter of the nation's wealth is in the hands of private debtors. Until private debts are run through a clearing house, no one can say what the total for the people of the United States amounts to; a wholesale merchant owes a manufacturer, a retail merchant owes the wholesale merchant, customers owe the retail merchant, many of the customers are themselves creditors, and so debts and credits offset each other in a maze of financial operations. It would be foolhardy to do more than take the principal classes of private debts, the amounts of which are known or may be estimated, perhaps without enormous error, and to regard their total as the minimum probable net debt. In the following statement of private indebtedness for 1890, each estimate, except the one for real-estate mortgages, has been included after much hesitation; the item of "other private debts" is not an estimate, but is added to bring up the total to a round number and to account for part of the net debt of trade, manufactures, court judgments, professional services and other items not specifically mentioned. For such possible use as the reader may desire to make of it, the public debt of 1890 is added.

## MINIMUM DEBT OF THE UNITED STATES, 1890.

*Private Debt.*

## Quasi-public corporations :

|   |                 |
|---|-----------------|
| Steam railways (funded) . . .   | \$4,631,473,184 |
| Street railways (funded) . . .  | 151,872,289     |
| Telephone companies (funded)  | 4,992,565       |
| Telegraph, public water, gas,<br>electric-lighting and power<br>companies (estimated) . . . | 200,000,000     |
| Other quasi-public corpora-<br>tions (to make round total) .                                | 11,661,962      |

---

Total . . . . . \$5,000,000,000

## Private corporations and individuals :

|   |                 |
|---|-----------------|
| Real estate mortgages (esti-<br>mated) . . . . .  | \$6,000,000,000 |
| Crop liens in the South (esti-<br>mated) . . . . .                                      | 350,000,000     |
| Chattel mortgages (estimated)   | 300,000,000     |
| National banks (loans and over-<br>drafts) . . . . .                                    | 1,986,058,320   |
| Other banks (loans and over-<br>drafts, not including real<br>estate mortgages) . . . . | 1,172,918,415   |
| Other private debts (to make<br>round total) . . . . .                                  | 1,191,023,265   |

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Total . . . . . \$11,000,000,000

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Total Private Debt . . . . . \$16,000,000,000

*Public Debt.*

|                            |               |
|----------------------------|---------------|
| United States . . . . .    | \$891,960,104 |
| States . . . . .           | 228,997,389   |
| Counties . . . . .         | 145,048,045   |
| Municipalities . . . . .   | 724,463,060   |
| School Districts . . . . . | 36,701,948    |

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2,027,170,546

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Grand Total . . . . . \$18,027,170,546

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From this it appears that, at the least, about twenty-seven per cent of the wealth of the country is in the hands of private debtors, and about thirty per cent in the hands of public and private debtors. But the private debtors have more than an equivalent of wealth with which to pay their debts. In respect to temporary possession, use and enjoyment, this wealth is distributed among persons and corporations that need it and have it under control. Most of it they use as productive capital and on most of it they pay interest. The query is now suggested whether this interest—and, consequently, all interest together with profit above interest—is not the chief of the more permanent immediate causes of a concentration of wealth.

On the public and private debt alone the annual interest may be reckoned, at six per cent, to be more than one billion dollars—an amount undoubtedly much greater than the profit that remains with the debtors. It is equal to one-twentieth of the annual product of wealth and one-half of the annual savings. While the entire amount of the interest and profit paid every year to residents of the United States cannot yet be estimated, the total is clearly enormous; and the figures expressing farm and home proprietorship, on a preceding page, indicate that this amount is paid by the many to the few. There is nothing new in the computation that interest-bearing principal grows with geometrical progression when the interest is invested at interest; and this investment is more common among the very rich, who already own a large proportion of the national wealth. Such amounts as receive this accretion double every twenty years, if five per cent may be regarded as an average net return to the interest-bearing investments of the very rich.

But while interest seems to be a potent cause of the concentration of wealth, it does not follow that fortunes will continue to grow from small beginnings to the same extent as in the past. Many of the opportunities that have made millionaires must be such as will recur with less frequency, if they do not disappear entirely. The origins of millionaire fortunes have been ascertained by the New York *Tribune*, and

they may be classified as follows, conceding that the classification is not a certain one and that it would be made somewhat differently by others :

CLASSIFICATION OF MILLIONAIRES ACCORDING TO SOURCES  
OF THEIR WEALTH.

|  |              |
|--|--------------|
| Land and its exploitation . . . . .  | 825          |
| Natural and artificial monopolies . . . . .  | 410          |
| Agriculture, ranch stock, sugar, <i>etc.</i> , often with land . . . .                 | 86           |
| Trade and manufactures, often with land and securities . . .                           | 2,065        |
| Interest, profit and speculation not otherwise mentioned,<br>often with land . . . . . | 536          |
| Inheritances, otherwise unexplained . . . . .  | 34           |
| Miscellaneous, often with land . . . . .   | 70           |
| Unknown . . . . .  | 21           |
| <b>Total . . . . .</b>   | <b>4,047</b> |

A new country, like the United States in its past decades, affords many opportunities for making fortunes that are rarely or never found in the older countries. The opening of mines, the cutting of forests, the building and consolidating of railways, the rise of land values in growing cities, the expansion of manufacturing and trading demands in a rapidly-increasing population—all these stimulate the initiator to play for great stakes. But the period of such chances and opportunities is transitory; pioneers cannot be followed by pioneers. As time passes fortune-building on the whole settles down to an investment of the savings of a moderate rate of interest. An exception of considerable importance is to be found in the unearned increment of land values. A reference to the *Tribune's* list of millionaires shows how potent a source of their fortune this increment has been, and although its powers may be diminishing, its extinction is not yet in sight, while the results of the census indicate that the land is passing into the ownership of a smaller proportion of the inhabitants.

It is time to pause in this consideration of the concentration of wealth and to question whether wealth saving should be the

chief object of life — whether within moderate limits of saving, the masses of the people are not happier and better qualified to elevate social institutions than they would be if saving were all and living nothing. Does not common sentiment regard an ambition merely to die rich as a most sordid one, and an ambition to round out one's existence with a life well lived, apart from money getting, as one to be commended? The two may go together with the rich, but as far as the masses of the people are concerned, most of them wage and salary earners or employers of productive capital on a small scale, the acquirement of moderate riches is at the price of much self-denial through life. Shall it be moderate riches, or a high standard of living without a competence? Evidently the people of the United States have preferred the latter; the savings of the nation, apparently, are not the savings of the masses of the people. The general appearance of comfort and well-being seen almost everywhere, except among the poor whites and blacks of the South and the poorer factory and tenement-house populations, indicates a disposition to live for the present, even if wealth in the future is delayed, rather than to sacrifice the present for the future. While the few have been getting a principal share of the new wealth, the many, on whom the progress of the nation ultimately depends, have been increasing their material comforts, their enjoyments and their knowledge; and has not this been better on the whole for the United States than such a saving as the French people have practiced?

Perhaps the expenditure in place of saving has gone too far in the United States. It will not do to let the few become exclusively the employers and the creditors. They are not qualified to exercise such a trust; and even if they were, the time must nevertheless come when the masses of the people would find their interest less in raising the standard of living than in promoting their independence by accumulating wealth. Beyond some varying point, cost of living becomes inexcusable extravagance.

But the tendency toward concentration of wealth in this country is promoted not only by the remarkably wide distribu-

tion of well-being, but also by a narrow diffusion of economic instincts, and further still by an insufficient distribution of wealth-saving employments. When the census returns of occupation are published, it may be possible to show somewhat definitely how the distribution of wealth is limited by the nature of occupations. While, all persons included, it is probable that the concentration of wealth has gone too far; yet, excluding most of the very rich, it would seem as if the concentration were largely determined by the defects of human nature and of social life in a rapidly evolving environment. There is a large element of the population unfitted to save or to earn much, and unqualified to use and keep considerable wealth. Until the race improves this class out of existence, there will be an extreme of poverty—the penalty of shiftlessness, improvidence, a want of economy and deficient industry.

The supposed “middle class” of wealth owners exists perhaps as much in appearance as in reality. It is numerically less than the poorer class, but it seems to be much larger, owing to the distribution of borrowed wealth and the remarkable diffusion of well-being that prevails. The probability that the middle class will acquire a larger proportion of the nation’s wealth cannot be assured until the rising standard of living is checked; and even in that event not much progress can be made until in the course of time the savings out of wages and salaries and small business undertakings have assumed much greater proportions than they now present, and have become interest-bearing investments. The promise that these will balance the accumulations of the rich is so uncertain that it is not of present moment.

Among the more wealthy there is a prospect, in some respects remote, it may be, that fortune building will be narrowed to the limits of saving from an income of interest. In a new country the accumulation of fortunes is not the unqualified evil that it is commonly supposed to be. The capital requisite for rapid development will not be acquired and saved by the masses; the undertakers of great enterprises must be very wealthy. But there is always the danger that

they will get too large a hold upon the wealth, the resources and the labor of the country. If they have now secured this, the most effective and practicable remedies are progressive taxes on incomes, gifts and inheritances.

The disposition of property through bequest and under the laws of intestate succession seems to be an inadequate check on wealth concentration. Notwithstanding the fact that one-fourth of the wealth is redistributed through probate courts every eleven to thirteen years, or thereabouts, and transmitted to more numerous holders, the diffusion of wealth has not been the net result, and perhaps it might not be so if accumulation were confined to interest and the earnings of labor. Perhaps the members of the middle class have not become poorer, but the rich have outstripped them as accumulators ; and if, with nine per cent of the families of the country now owning more than seventy per cent of its wealth, the proportion of these families is to diminish in the future as it has done in the past, the problem that is to vex the coming ages of the republic is already clearly manifest.

In a new country rapidly developing out of the conditions that go with agriculture, it is inevitable that there should be considerable concentration of wealth, and in some respects, at least, there are reasons for believing that to be desirable. But the inertia of such a movement may carry it too far, and it is not clear that, in the natural order of events, independent of taxation, the distribution that is most conducive to social welfare will assert itself when more permanent conditions have been reached.

GEORGE K. HOLMES.



## THE ECONOMIC STATE.

BY some writers on economic theory, land, labor and capital are taken as the three factors essential to production. In other treatises only land and labor are included under this head, capital being looked upon simply as saved labor, and classed in the same category as machines and industrial undertakings. If we mean by production the simple exertion of physical energy necessary to sustain organic life, land and labor may indeed be considered as the sole factors which are involved. In the science of economics, however, we are not dealing with organic creatures in general, but with human beings alone, who are conscious of their activities. Economic production must, therefore, be distinguished from simple production and regarded rather as the conscious application of man's physical labor upon the land. Inasmuch, however, as it was human consciousness which first evolved the idea of capital and induced men to apply it in practice to all their creations, this distinction will prove fundamental. It will compel us, in short, to abandon the saved-labor theory and include capital, without reservation, among the original elements of economic production. Man, moreover, is by nature a social animal, and produces not individually, but in combination with his fellows. Economic production must, therefore, involve both a division and an association of human labor. As this, however, renders necessary some system of exchange and distribution before the final end of production is reached in the satisfaction of the individual desire, and as such a system does not fall in the category of either land, labor or capital, we are forced, it seems to me, to go still further and to add to the three original factors of economic production, a fourth, namely, industrial organization, or the economic state.

The inclusion of capital and the economic state among the prime elements of production is no novelty. In going over the proof I consider necessary to justify such inclusion, I shall

be obliged for the most part to traverse familiar ground. My only excuse for the repetition must lie in the fact that I have nowhere found developed in one logical connection, the doctrine that economic production must, in its very nature, imply division and association of labor, exchange and distribution, and that without the concrete existence of capital and the industrial state such production would be impossible.

It is unfortunate that the English language contains no generally accepted word to describe the conscious activity of human beings in the joint satisfaction of their individual desires. The simple term production we have already found too narrow, while the expression economic production is both awkward and ambiguous. The Germans have tersely summed up the idea in their word *Wirtschaft*, and in the absence of a better term I may perhaps be allowed to adopt a growing usage and employ our own noun "economy" in this same active sense. Henceforth in the present inquiry, therefore, "economy" may be taken as a term practically convertible with "economic production" as used thus far.

## I.

Before attempting to analyze the actual economic conditions of society, one should first, through a process of pure reason, form an abstract idea of an economy, and then determine the constituent elements which go to make up this idea.

As the natural premises for such a deductive inquiry, we may assume first, the surface of the earth, with its annuity of heat, light, air and moisture, and second, the human beings who inhabit this surface.

Being members of the human family ourselves, our knowledge of this second premise can only come through a process of self-examination. If we adopt, therefore, the dictum of Socrates, γνῶθι σεαυτόν, we shall find, as he did, that human nature is dual; that within us there is both a particular and a universal self — a nature of pure sensation and a nature of pure thought. For our present purpose, however, we must go still deeper and recognize the fact that both these natures have

wants which must be gratified, else existence is impossible or at best incomplete.

Through instinct and experience, we have long since learned that outer nature, — or, as we have defined it, the surface of the earth with its annuity of heat, light, air and moisture — is the final source of satisfaction for human needs. But nature is, we know, chary of her gifts, and returns life-giving elements to man only on the condition that he exert at least his physical self upon her. Human life is, therefore, in its very essence, a struggle for existence — an endeavor on the part of man to satisfy his wants from outer nature, or the land, by the exertion of his physical energy, or labor.

If we now submit ourselves to a still more rigid self-examination, we shall be forced to admit, I think, that by nature we are averse to labor ; or, as Emerson has somewhere said: "Man is as lazy as he dares to be." And yet, as human beings, we know that our natural cravings are both limitless and apparently insatiable. For every longing satisfied by labor there is opened up before us a new vista of ungratified desires. Thus, from the satisfaction of the simple necessities of our physical being, we are led on through the gratification of our more complex physical wants to a thirst for mental and spiritual fullness. Those who have pursued furthest the dictum of the physical sciences, γνῶθι τὸ ἑξῆς, assure us, however, that outer nature is not merely chary of her gifts, but in the highest degree niggardly. From the facts they lay before us we are even reluctantly convinced that, after a certain point has been reached, the land of the earth's surface will tend to afford a decreasing rather than an increasing return to man's labor.

Were land and labor, therefore, the sole factors of the economic problem, man's struggle on earth for an ever-expanding existence would indeed be a hopeless one. True, we could perhaps conquer our natural inertia; but even then physical exertion would find its ultimate limit in possible human endurance. Unless a given amount of physical energy exerted by man can be made to force from outer nature an ever-increasing return, starvation, or at best stagnation, must ensue.

If, in short, the interaction of the natural forces inherent in land and labor give as a resultant simple brute existence, where by the postulate of human nature an enlarging economic existence is demanded, then the introduction of some third factor is essential to the solution of the question.

In this struggle for economic existence the initiative must, in the very nature of things, lie with man. If, therefore, the simple exertion of his physical nature must in time prove inadequate to satisfy his ever-increasing wants, he will ultimately be obliged to turn to his nature of pure thought for the extra force required, simply because this is the only source remaining from which he can draw. It is impossible, of course, that thought should exert itself directly upon outer nature in the satisfaction of human wants. Man may, however, by the exercise of his ingenuity, devise means whereby the forces of the outer world shall be made to take the place of his physical muscle-power in the gratification of his desires. Or, again, he may invent tools which shall be better adapted to extract goods of satisfaction from the land than those given him by nature. In either case it is the spiritual man that must evolve the idea, while the physical man is simply left with the task of putting it into execution. Such goods, invented and fashioned by human beings to be devoted to reproduction, we call capital — the first fruits of man's economic genius.

We are certainly justified, therefore, in including this idea of capital among the elements essential to an ideal economy; for without capital economic existence would be impossible. The point to bear in mind, however, is, that though some check must indeed be imposed upon the immediate desires of the individual, before he can provide himself with such goods as he can devote to reproduction, still, this restraint is rather the attribute than the essence of the idea. Capital, in other words, should be regarded not simply as the result of abstinence, but rather as the creature of pure thought, instituted by man's inventive genius, realized by his physical labor and amassed by his spirit of saving.

With the creation and expansion of capital, however, man's ingenuity cannot be said to have played its entire rôle. Land, labor and capital alone would never suffice to solve the problem of human existence ; nor, as a matter of fact, have they ever done so. Capital, it is true, is able to save labor to almost any extent, conquer outer nature with marvelous effect, and give us satisfaction for a host of wants before not even dreamed of ; but let a human being invent, save and labor as he will, there must still remain before him a mountain of ungratified desires, if for no other reason than because individual labor and capital are not powerful enough to conquer outer nature to the extent required for the economic evolution of the human species. Then again the land, which must be looked upon as the final source of supply, is strictly limited both in area and in productive capacity, while human beings, whose wants are limitless, may multiply without end. If, then, all mankind through the application of labor and capital continually strove to reap greater and greater satisfaction from the one common source, there would in time of necessity result a conflict of individual interests, and human existence would resolve itself eventually into a war of extermination — the very negation of economic advance.

Over and above the waste of energy involved in this condition of individual warfare, there seems also to exist in the human breast a natural antipathy to such a state of affairs. If we now pursue our process of self-examination to the end, we shall find that beyond the merely economic desires which crave satisfaction and impel us onward in the struggle for existence, there is further a long series of what we might call political wants, emanating entirely from our universal nature, which also demand fulfillment. We desire to live at peace with our neighbors, we are anxious to coöperate with them in the mutual satisfaction of our wants and to work in harmony with them in our struggle with outer nature. Darwin seems somewhat in doubt whether these "social instincts," as he calls them, have been acquired "through natural selection, or by the indirect result of other instincts and faculties, such as sympathy, reason, experience and a tendency to imitation; or again whether they

are the result of long-continued habit."<sup>1</sup> Be this as it may, we can certainly affirm with confidence that it is man's insatiable desires, both political and economic, which, unable to reap adequate satisfaction through the individual application of labor and capital upon the land, compel him to call once more upon his universal nature to devise some means whereby he may unite with his fellows in the joint fulfillment of their wants and in harmony of life.

Such a union of interests, to be economically advantageous, must not only imply a political association of individuals, but also a division of their labor and capital and a regular system for the exchange and distribution of their products. Now in order that this scheme of coöperation may be actually carried out, and not remain simply an idea of the reason, some concrete form of industrial organization is absolutely essential. Furthermore, considering human nature as it is, the organization, as such, must be all powerful over the individual, in order that each worker shall be forced to do his allotted part, and in order that each shall receive a share in the ultimate distribution of the goods of satisfaction in due proportion to the labor and capital he himself has expended. In other words, an organization of individuals for industrial purposes, to be active, must be subject to the control of one supreme central authority, to which all individual questions affecting its workings may be referred, and from which there can be no appeal.

This idea of a union of individuals under one sovereign power, is, however, nothing more nor less than the idea of the state expressed in the language of economics ; or, as Bluntschli has tersely and adequately expressed it: "*Der Staat ist die organisierte Menschheit.*"<sup>2</sup> If, therefore, we mean by an economy the continued satisfaction of the ever-expanding wants of mankind at the least possible expense of human energy, we are forced, it seems to me, to add to the three elements thus far found essential to the idea, land, labor and capital — a fourth constituent element, the economic state.

<sup>1</sup> Darwin, *Descent of Man*, p. 79.

<sup>2</sup> *Lehre vom Modernen Staat*, I, 34.

## II.

Let us now change our point of view, and examine the industrial conditions of society objectively.

Since all mankind must, in a state of pure nature, satisfy its primitive wants through the exertion of physical energy upon the land; and, since we can discover no savage people in all the course of history who have not shown at least some ingenuity in the invention of labor-saving devices, as well as some restraint in the saving of such goods as could be devoted to reproduction: we are certainly justified in assuming land, labor and capital as the three elements which, in fact as well as in theory, have proved essential to all human economies. Of the fourth constituent element in our ideal economy, however, we cannot speak with such easy assurance. We certainly do not see all individuals nowadays co-operating in the struggle for existence under one industrial organization; nor, indeed, does this appear ever to have been the case. But on the other hand, history affords us no consistent examples of individuals who, for any length of time, have successfully combatted nature single-handed. We are thus precluded from basing our inductions either upon an all-comprehensive world state, or again upon a system of economic individualism.

We shall reach a more correct conception of the actual state of affairs, it seems to me, if we but remember that evolutionary growth is not that of a straight stalk ending in a single flower, but rather that of a tree and its branches, each branch sprouting with countless twigs, and each twig laden with many blossoms. With this idea in mind, we may best look upon the pre-historic horde-life of man on earth as the roots of the tree of economic evolution. We will see, then, that in the course of time there have grown from the original trunk many industrial branches, on whose myriad twigs again have blossomed innumerable human economies, each with its own land, labor and capital all closely held together in the folds of its particular industrial organization. An analysis of the concrete conditions of modern industrial society would seem thus to have

become exceedingly complicated; yet this is not necessarily the case. To determine whether the economic state is, in practice as well as in theory, a condition precedent to industrial advance, we have but to follow the growth of that particular branch of the economic tree which to-day is the stoutest and longest, and then analyse the most perfect flower of its topmost twig. In this is embodied that economic concept most nearly approaching the ideal economy of our reason; and having determined upon its constituent elements, we may take them to be those actually essential to the highest forms of economic evolution.

To arrive at practical results we must therefore discover, partly through a process of elimination and partly through a constructive historical inquiry, in the first place, what lands of the earth's surface have been the abodes of man's successful economies; secondly, what human beings by the application of their labor and capital have brought these economies to their high degree of perfection; thirdly, whether these people have achieved this end through coöperative methods; and, lastly, to what extent the industrial organization so formed, if present, has proven indispensable to their economic advance.

All the lands of the earth's surface are, as we know, not equally qualified to supply the economic needs of the human race; nor, indeed, have they all been rendered equally productive by the application of labor and capital. In the frigid zones, on the one hand, nature responds so charily to the labor of man that he must exert his utmost physical effort barely to subsist; while neither energy, time nor material is left him to be devoted to capitalization and advance. In the tropics, on the other hand, nature is too lavish. It requires there little more than simple physical motion to satisfy all the requirements of a lazy existence. Necessity rarely calls forth the mental reserve force of the inhabitants of these parts, while the ease of life and the enervating influence of the climate conspire to suppress in these people all ambition and all desire to improve their lot. In the configuration of the earth's surface, at least, we may truly say that virtue lies in the mean. It is in the lands of the



temperate zone, or in those lands of the tropics whose elevation renders their conditions of soil and climate similar to those of the temperate zone, where human beings have actually realized the ideas of their reason, and have thus raised themselves definitely above the plane of simple existence. The cause of this phenomenon is apparent enough. In these temperate lands nature returns to man, provided he exerts his energy upon her, ever something over and above the necessities of every-day life, and thus assures to him both time to picture new wants and ambition to satisfy them, besides providing him with extra materials upon which he may exercise his economic ingenuity.

In spite of these natural advantages, however, we find to-day, in some of the most fertile lands of the temperate zone, both stagnant and retrogressive economic conditions. We can only infer from this that all human beings are not equally endowed with economic genius. Let us, therefore, carry our process of elimination still further, and determine, if possible, what members of the human family within these temperate lands have actually taken advantage of their surroundings and are now successfully solving the industrial problem.

Following the latest researches in anthropology, ethnology and comparative philology, we may first divide mankind, somewhat roughly, into three original races : the black, or negro race ; the white, or Caucasian race ; and an unclassified mass, which is included under the head of the yellow, or Turanian race.

Whether the black race was originally driven from the lands of the temperate zone by successive waves of the yellow and white races is purely a matter of conjecture. We do know, however, that during historic times the negroes have always remained in the tropics and have added little or nothing to economic advance. Whether, again, this unprogressive condition is due to ingrained race characteristics or merely to unfavorable surroundings, is not the question. Probably both causes have had an influence. The fact that the members of this primitive race who have been transported in a condition of slavery to

fertile lands of the temperate zone, have rarely shown, even after regaining their freedom, any special economic genius or any great ambition to advance, points rather strongly to the conclusion that the negro race is essentially inferior.

In dealing with the economic characteristics of the yellow race, on the other hand, we have a more complex problem before us. The Turanians have inhabited from time immemorial fertile lands of the temperate zone, and in many cases have demonstrated marked economic aptitude. If to-day, however, we except the Hungarians and Japanese, who have adopted the industrial methods of the Caucasians, we must, I think, admit that the members of this conglomerate race have never been able to comprehend the real significance of an economy, as we understand it. True, the best of them are saving and industrious, and have shown at times remarkable inventive genius in conquering niggardly nature; their wants, however, are few, their industrial organization is crude in the extreme, and there appears among them none of that restless ambition to perfect their existence, so characteristic of our modern economies. We need no longer follow, therefore, the growth of either negro or Turanian economies. Not that they do not form branches of the economic tree; but only because these branches are neither so stout nor so long as those of the white race, and because their industrial blossoms are at best undeveloped.

Even though we may now eliminate from our inquiry the lands of both torrid and frigid zones and the labor and capital of the black and the yellow races, as factors which can not enter into the economic unit we are seeking, still our inductive analysis is far from complete. Neither the land of the temperate zone nor the economic energy of the white race can constitute the simple elements we require as the foundation for our constructive work. We have before us, it is true, the main branch of economic culture, but we have still to determine which of its twigs have borne the fairest flowers.

If we proceed to examine the temperate lands more carefully, we shall find them composed of smaller geographic unities,

which we may succinctly define in the words of Dr. Burgess as "territories separated from other territories by high mountain ranges, or broad bodies of water, or impenetrable forests and jungles, or climatic extremes—such barriers as place, or did once place, great difficulties in the way of external intercourse and communication."<sup>1</sup> Though all situated within the temperate zone, some of these geographic unities are found to be by nature better qualified than others to respond to the labor of man; some are peculiarly adapted to the satisfaction of one set of human wants, some to the gratification of another. To be exact, therefore, we should examine these geographic unities severally, looking upon each as the land-element of that particular economic structure man has built upon it.

Nor, on the other hand, can the white race be at all regarded, in history, as a simple ethnic unit, whatever may have been the case in prehistoric times. While still nomads the Caucasians are found divided into three great families, the Hamitic, the Semitic and the Aryan. The members of these several families, again, the better to gratify their primitive desires, early began to exercise their inventive faculties in fashioning implements of the chase and in organizing themselves along family lines into clans and tribes. Having thus, through the institution of capital and the realization of their social instincts, raised themselves once for all above the purely savage state, the succeeding steps in the politico-economic evolution of these several tribes followed in natural sequence. Finding their immediate physical wants still insufficiently and irregularly satisfied, these people probably next conceived the idea of taming the beasts of the field, instead of killing them outright, and thus provided themselves with a form of capital which would reproduce itself, with but little expense of energy on their part. It is on this plane of economic civilization that we meet our Caucasian ancestors in legend, organized as pastoral tribes, wandering over the lands of the temperate zone, tending their flocks. With them, however, nomadic existence was, like the hunting stage before, but a

<sup>1</sup> Burgess, *Political Science and Constitutional Law*, vol. i, p. 2.

transition period, and at a certain point in its career each family of this dominant race turned to agricultural pursuits, thus realizing the significant idea of capitalizing the very surface of the earth itself, and making it reproduce to order. This transition to the agricultural stage of society necessitated, of course, an abandonment of the older wandering life, and gradually brought with it also a revolution of the primitive tribal organization. Some particular district of land, some special geographic unity of the temperate zone, had now to be chosen as a definite abode and source of supply. A new element was thus added to the lives and traditions of these various tribes. The desire to exploit the natural resources of their geographic unity by the application of labor and capital and through the improvement of their industrial organization, together with the necessity of defending their incipient economy from the rapacity of jealous neighbors, immensely broadened the sphere of action for the social instincts of these people, strengthened their family ties, and developed further the bonds of tribal union already existing. Peculiar geographic conditions, working thus upon these half-leavened lumps of tribal affinities, produced finally a further coalescence within each of the three great families of the white race, and formed a new aggregate, the nation, which may be looked upon as the simplest ethnic unity, and defined again with Dr. Burgess, as "a population having a common language and literature, a common tradition and history, a common custom and a common consciousness of rights and wrongs."<sup>1</sup>

Our process of elimination may now be considered complete; for, as a matter of historic fact, I think it will be conceded that it is the interaction of these two forces—the productive capacities of the several geographic unities of the temperate zone, and the economic energy of the various Caucasian nations inhabiting the same—which has actually brought forth the highest types of our economic civilization. By economic energy, however, I do not mean human labor in the ordinary sense of the term, but rather physical labor force,

<sup>1</sup> Burgess, *Political Science and Constitutional Law*, vol. i, p. 2.

directed by that subtler energy of man's mental nature which we have called his inventive genius.

Henceforth our inquiry will be constructive, and will be directed along the line of general economic history. We have now simply to determine which of these ethnic unities of the white race have reared the most perfect economies within the geographic unities of the temperate zone, and to what extent these successful builders have deemed it to their highest industrial interest to place themselves, their land and their capital all under the supreme authority of an economic state.

Assuming such a geographic unity of the temperate zone, inhabited by an ethnically unified people of the dominant race of man, some form of industrial organization, including the land, labor and capital contained therein, and with supreme authority over all three elements, would seem to be a natural development. It would certainly be to such a nation's interest to exploit to the utmost the natural advantages of its particular land; and this, experience as well as reason will reveal, can only be accomplished by means of a division of labor and capital, and through a system of exchange and distribution, harmoniously carried out under the sanction of supreme law. Then, again, among a people who, through inherited racial characteristics and the influence of environment, have come to have common economic notions and a common political ambition, there would be little to prevent the formation of such an organization and little to hamper its operation when once established.

Among the economies of the ancient Semites, Hamites and Aryans, however, this idea of industrial coöperation was but little developed. The individuals composing the several ethnic unities in these families of the white race were not in a position to comprehend the scope and advantage of such a system. What organization there was, therefore, came from above. Those few enlightened men who grasped the idea of the state and its sovereignty, used it to oppress their fellows and reap the rewards themselves. Furthermore, as soon as each of these ancient nations had reached a certain point in its politico-

economic growth, the idea of conquest cropped out, which, indeed, seemed to them the only adequate way of satisfying their expanding wants. By the application of great physical force, concentrated through military organization, weaker economies could thus be brought under the sway of the stronger, and the land, labor and capital of the former be turned to the further gratification of the desires of the latter. From the standpoint of the dominant nation, this idea was indeed a labor-saving device, and directly in the line of its industrial advance. It had, however, a demoralizing effect upon the conquered people, not only destroying their spontaneous ambition and stifling their spirit of invention, but also hindering at every turn their national development.

As we pass in economic history from Asia to Europe, we notice, it is true, in the later-born economies, that the workers themselves began to enter more and more fully into the control of their industrial organization and into the ultimate distribution of its products. While the idea of the economic state was thus sinking deeper and deeper into the minds of these ancient people, so at the same time, however, as if to neutralize its effect, the idea of conquest waxed stronger and stronger, until at last, among the highest developments of ancient industrial culture, we find, instead of a series of independent economies, simply a collection of incipient economic organisms whose lands, labor and capital are all held firmly by force of arms in the grasp of a single international power.

At this point the main stem of our tree of economic evolution bifurcates. On the one side appear only the dead stock and withered industrial blossoms of Roman imperialism ; on the other the vigorous life and healthy flowers of free Teutonic growth. Grafted to the Roman branch, it was but natural that the earlier blossoms of the young shoot should have resembled those of the older. The idea of conquest, in other words, kept cropping out now and again in different forms during mediæval times ; and though it developed finally into the mere empty dream of a world empire of the West, still it had somewhat the

same retarding effect upon national industrial growth during this period as before. Another force was also active in the same direction during the middle ages. The feudal system — the first bud of this later Aryan branch — divided the lands of the several geographic unities of Europe into smaller arbitrary divisions called fiefs, and gradually transferred the supreme authority over the agricultural economies within them from the original peasant proprietors to the feudal lords themselves, while the handicrafts, then in their infancy, were huddled in the towns under an industrial organization of their own, striving to free themselves entirely from feudal control. Agriculturists living within the same geographic unity, who by nature were destined to become ethnically unified, were thus for a long time kept apart through their subjection to different feudal lords, while the peasants as a class were severed by jealousies and feudal restrictions from their kinsmen of the towns. Loose political organizations among the different feudal lords did exist to some extent during these ages, and some spirit of industrial coöperation began also to manifest itself among the burghers of the different towns. Such organizations, however, disregarded the lines of both geography and ethnography, and one and all were lacking in that principle of central sovereignty so essential to the idea of the state.

Beneath the outer forms of the feudal system, geographic and ethnic forces were, however, still persistently active. The germs of a higher economic product were beginning at last to show signs of life. Within each geographic unity some Teutonic prince, actuated by personal ambition and yet supported for the most part by the entire peasant class, whose aim was to free themselves from the exactions of the petty lords, began step by step to bring under his control all the agricultural fiefs of the land. The towns, on the other hand, had already become practically freed from the feudal system ; and, as each had its own political and economic interests, they were naturally loath to be again subjected to external authority. In time, however, it became apparent to the townsmen that their guild economies could not advance a step farther without

the support of the agricultural class. Some regular system of exchange between the two was absolutely essential, and such a system, the burghers were reluctantly forced to admit, could now only be carried out under the authority of the lord who had by this time brought under his control all the other industrial factors of the country. Thus were the various towns of each geographic unity one by one compelled, sometimes by brute force, sometimes by the economic necessity of the case, to join with the agriculturists, and enter with them into the particular politico-economic organization designed by the absolute monarch to meet their respective needs.

In Europe, at least, we may therefore truly say, the growth of national politics and the development of national economies went hand in hand. Through the inventive genius of the Teutons the industrial and political wants of these later Aryan people were at last placed upon the road to mutual satisfaction. As early as the seventeenth century we find in the geographic unities west of the Rhine—the Spanish peninsula, the Gallic lands and the British Isles—pretty well amalgamated ethnic unities, each with its accumulated wealth and capital, each politically and economically organized under a Teutonic prince who based his authority, not primarily on force, but rather upon the tacit approval of both peasants and burghers and the acquiescence of the feudal aristocracy. The national industrial state had, in short, by this time become an economic necessity, and before it the older feudal economies everywhere fell away. In their places other national states grew up in time within the rather ill-defined geographic unities of Central Europe and along the border lines of the Gallic lands, in Northern Europe, in the Italian peninsula, and to some extent also in the Slavic lands of Eastern Europe—one and all, if we examine the question closely, owing their politico-economic organization to Teutonic inventive genius.

With this increase in the number of industrial states, there was going on at the same time in Europe an evolution also in their internal structure. Once under the control of a central economic authority, the agriculturists and handicrafts-



men of these new nations began to find their respective economic interests becoming more and more identified through the exchanging class, and at the same time to realize a divergence of these interests from those of the authority to which they had submitted themselves. Their demand was accordingly for greater individual freedom and at the same time for a closer industrial organization. The national monarchs naturally failed to grasp the situation. From the outset they had been actuated in their work by the idea of personal aggrandizement, and they looked upon their now full-fledged national economies much as their fathers had regarded their original feudal estates. To carry out their common ideas, each ethnic unity, therefore, was compelled at last to assert its own collective sovereignty, and intrust the authority, both political and economic, to a ruler of its own choosing, no longer in fee simple, but only during good behavior, and even then under strict conditions as to policy. Thus in law as well as fact each European nation, organized now along political and economic lines as a state, became the holder of the sovereign power over its own individual members, and over the land whence, by means of its labor and capital, it could achieve the satisfaction of its wants.

Three of the states so formed, England, France and Spain, had, meanwhile, sent forth ethnic shoots into the western hemisphere, some of which have since grown up into national industrial states within the geographic unities of America. Those in the southern continent have followed very closely the bent of Spain in their politico-economic growth, though, as independent states, they are even at this day comparatively immature. The industrial organism of the far north, on the other hand, though well developed economically, is still politically attached to England, and cannot, thus, be considered an independent state at all.

In the centre of the North American continent lay three geographic unities, the Atlantic slope, the Mississippi basin, and the South Pacific slope,<sup>1</sup> colonized respectively by English, French and Spanish settlers. It seemed at one time

<sup>1</sup> Burgess, *Political Science and Constitutional Law*, vol. i, p. 12.

as if the coincidence of these lines of ethnic and geographic demarkation might result in the growth of three independent states. The longitudinal mountain ranges of North America, however, could scarcely form barriers sufficient to shut off communication between nations so highly developed in the ways and means of intercourse as the English, French and Spanish. The early settlers, furthermore, were all on the same plane of economic culture ; and under the influence of the common interest in redeeming their new lands and keeping them free from the further encroachments of their former masters, the absolute monarchs of Europe, old-country ethnic divisions began gradually to fade away. As a matter of fact, the entire North American continent may perhaps best be regarded as a single geographic unity. It is practically all included within the temperate zone; it is surrounded on all sides by broad stretches of water ; and it is but little cut up internally by mountain ranges or great climatic differences. These considerations impressed themselves more or less upon the English, French and Spanish settlers, and the question as to which of the three ethnic types should assume the initiative in controlling the entire country and in organizing a common industrial system for all, thus resolved itself, finally, into one of force. The struggle, however, was short lived. The English colonists, descendants from the purest Teutonic stock, won the day, absorbed the other ethnic elements and freed themselves entirely from European control.

Influenced by their new environments, these three European nationalities, in combination with each other and in further amalgamation with other ethnic types of the old world, have since given birth to a new ethnic unity,—the Americans,—who in turn have amassed their own national capital and, untrammelled by feudal traditions, have organized themselves along political and economic lines of their own into what is probably the most perfect industrial state as yet evolved by the genius of man.

Here our constructive enquiry must cease. In the national state of our day we assuredly have before us that concrete

economic concept which most nearly approaches our pure idea of industrially organized mankind. As the essential elements of this concept, we should, therefore, now substitute for the land of the earth's surface the several geographic unities of Europe and America, and for the economic energy of the human race the peculiar forms of labor and capital applied upon these lands by the nations of later Aryan stock inhabiting them. Thus, instead of premising an all-comprehensive world organism, we should at present, it seems to me, confine our attention to an analysis of the particular industrial organizations which enfold, as it were, the land, labor and capital of our modern national states.

### III.

If called upon to define a national industrial state, I should speak of it as a product—and, withal, the highest product—of politico-economic evolution, made possible by the social instincts of man, induced by his primitive economic and political wants, and developed naturally through the centuries of his growth, in order to satisfy the increasing requirements of his ever-expanding physical and spiritual desires. Not only would I call this state a product of evolution, but further, an *organic* product, formed, as we have in our hasty survey noted, by the natural coalescence of individuals of a certain ethnic type, each with reciprocal social and industrial relations the one to the other, and all at the same time as organic units in direct politico-economic connection with the national state itself, which, in a final word, I would define as a *politico-economic organism*.

In all the state forms of the past there has always been one final authority, one court of last resort in matters industrial as well as in matters political. The change that has gradually come about has not been in the essence of authority itself, but rather in the particular persons in whom such sovereignty has in the course of time become vested. Publicists, it is true, have carefully followed the development of this idea from a purely political standpoint, and traced the gradual transition of

state authority from priests to despots, from the despots through the transition stage of oligarchy rule to the absolute monarchs, and from the absolute monarch finally to the popular sovereignty of our modern constitutional era. All that I have here endeavored to make plain is, that from beginning to end, in inception as well as in development, the sovereign state has always been, is now, and in all probability will ever remain economic as well as political in character. I have simply wished to show that the final source of political and economic power must in the very nature of things be one and the same; that our modern national states, in other words, are the economic sovereigns of the age, and that no individual industrial transaction can be begun, carried on or completed without the express or implied consent of one of these supreme authorities.

Instead, therefore, of premising the universal economic rights of man, we should, it seems to me, take our stand firmly at the outset on the economic sovereignty of the state and reason accordingly. Land and labor will still remain the primal elements of human existence; capital we shall find to be a phenomenon common in various degrees to all advancing economies; but it is the sovereign national state after all which must in our day, at least, be regarded as the determining factor in economic advance.

#### IV.

Publicists have long since ceased to speak of individual liberty as a natural right of man. Why, then, should economists continue to premise man's natural right of economic freedom? Such assumptions can only tend to retard the natural growth of our economic organisms. Economic freedom, I take it, is nothing more or less than the sphere of autonomy allowed to the individual by the state in economic matters. In economic as in political liberty the sovereign power sets the final bounds. So long as the supreme authority lay in the hands of despots, of feudal lords, or even of the absolute monarchs, this domain of economic freedom was, it is true, unnecessarily contracted and its boundaries arbitrary.

Nowadays, however, since the people themselves have become the state, the case is different. Under the constitutional system the people as an organic unit allot to themselves in severalty a definite sphere of individual industrial action, and place their government over the same to guard its boundaries. If one individual should then intrench upon the economic rights of another, these same governmental authorities will interfere. If, on the other hand, any organ of government itself should endeavor to overstep the power delegated to it by the sovereign state, and encroach upon the field of individual autonomy, the system of checks and balances in the modern constitution will operate to redress the wrong. Or, finally, if it become the prevailing opinion among the people that the domain of individual economic liberty thus laid down by them has in the course of time become too narrow or too extended to serve the best interests of their organic life, they may in their capacity as sovereign state, by amendment of their constitution, reconstruct the boundaries of industrial freedom to suit these changed conditions. In any case, it is the state which remains supreme ; individuals, as such, simply carry on their several economic activities under its control and at its pleasure.

When we speak in economics, therefore, of freedom of contract, freedom of labor and capital, freedom of business and market, we can only mean thereby such freedom as the state allows to individuals in these matters. Hence industrial liberty is not, as some would have it, the final issue between the forces of individualism and socialism in their death struggle, but rather a question of expediency, to be determined by the state, and not once for all, but relatively to time, place and organic growth—a question which rising state majorities will continue to take from the hands of antiquated governments to decide anew.

## V.

The industrial organism of the modern national state, then, is the fairest flower of economic evolution. But the tree of industrial development still tends heavenward and gives

promise of perhaps more perfect blossoms. We must consider the possibilities of this future growth.

We have already noted that the geographic unities of the temperate zone are by nature adapted, some to one form of production, others to another; that the various nations have exerted their inventive genius in the application of capital along various independent lines. Two courses are thus left open for the economic procedure of a national state. Either it may extract from its own land what satisfaction it can for all the diverse wants of its individual members, or it may use its labor force and peculiar inventive genius in exploiting its territory in that particular way for which it is by nature best adapted. Should an industrial state pursue the latter course, it must first be assured that the rest of the national organisms will also follow the same plan; for unless each can secure in return for its own surplus product a share of the peculiar surplus products of all the other states, the diverse wants of its inhabitants will still remain unsatisfied, and at the same time it will find itself burdened with a redundancy of its own productions.

In the early days of economic development such a system of division of labor and exchange on a national scale between the different sections of each geographic unity, and among the several industrial classes of each ethnic unity, was found, as we know, advantageous to all concerned. The same principle became, therefore, the more readily applied with increasing economic gain on an international basis among the several industrial states themselves. Just as, in the past, individuals of a common ethnic type settled in a definite land were induced, through their common social and industrial interests, to unite under one state organization, so now these very national states, sprung from one family of the white race, of common culture and with common aims, are beginning to be drawn into closer and closer union for the better fulfillment of their larger politico-economic demands. The cardinal distinction between the national and the international union lies in this fact, that over the individuals of the former the organization itself

is supreme, while in the latter the national organic units still retain their sovereignty. In the one case we are dealing with an organism, in form at least, complete ; while in the other the process of crystallization has practically just begun.

The political side of this incipient world-organism is indeed but slightly developed ; for political wants seem as yet better satisfied along national lines. It is the economic side—the international industrial union—which is significant. Economic wants seem to have expanded too far to be any longer adequately satisfied by national production and national division of labor alone. The crystallization of national economies into an international organization is, therefore, already well advanced, and is even now beginning to mould political alliances to suit its form. Modern nations, like individuals of old, are, it is true, for the present loath to submit themselves entirely to any extraneous control, either political or economic, and deem it essential to their best interests still to cling to the earlier principles of agreement and self-help. We should take particular note of the fact, however, that while international political law recognizes no ultimate authority other than the force of arms, international commercial law is actually enforced in the courts of the several national states themselves. Thus, again, by another road, have we come upon an actual realization of the world-empire idea. What authority it has, however, this international industrial organization derives, not, as before, from the force of arms, but rather from the free will of the national states themselves—the organic units which form it.

These buds of world-economy seem only to be found among the sparse foliage of higher economic evolution, for the present somewhat beyond the reach of inductive analysis, yet still in plain view of those, who, from the standpoint of the national organism, are watching them burst into fuller bloom.

Should we now, in conclusion, step back and view the industrial tree as it stands to-day, we cannot fail, I think, to admire its proportions and wonder at the symmetry of its growth. Surely the economic organism is as infused with life as are those of botany or biology. How, then, can the

analysis of such a product be regarded as "the dismal science"? Here, as in all the organisms of nature, the germ of life is the same; it is that very necessity of existence, that insatiable desire for ever something more, which makes us and all organic creatures struggle to live and grow. Human evolution only differs from that of the plants and animals in that man's desires have, in time, become two-fold. In addition to mere physical wants the human being feels the aspirations of a universal self; the nature of pure thought, as I understand it, being simply the complement and evolutionary outgrowth of the nature of pure sensation.

As in man physical well-being is the necessary condition of spiritual elevation, so we find the trunk of our economic tree firm-planted in material earth, whence, through its wide-spreading roots, it may draw its supply of life-giving elements and diffuse them through its branches to its topmost twigs. It is only upon the stout limbs of materialism, that the fair flowers of idealism can actually bloom and thrive; it is only through industrial utilitarianism that the ideals of modern society have ever been made possible. In our study of economics we should not, therefore, rest content with measuring the branches of this industrial tree as so much timber for use; nor, on the other hand, should we merely dilate on the economic beauty of such ideal blossoms as a balmy spring may perhaps bring forth. Rather should we study carefully the growth of the tree as it stands to-day, from its roots in mother-earth on through its spreading branches to the tips of its tiniest shoots; for only when familiar with the nature of its growth may we presume to prune it of its straggling branches and by concentrating its vital energy help it to bring forth the ideal fruits of our reason.

LINDLEY M. KEASBEY.



## PRIVATE CLAIMS AGAINST THE STATE.

PREVIOUS to the existence of tribunals vested with power to hear and determine claims against the government of state or nation, the question of the civil responsibility of the latter towards private parties received little if any judicial discussion or settlement. The validity of pecuniary or other civil obligations on the part of the government in many cases was undoubted, but they lacked the sanction of the ordinary remedies. The aggrieved party could not summon the government before the courts ; they could take cognizance of his cause at most where the government itself had invoked their jurisdiction and he sought to reduce its claim by set-off,<sup>1</sup> or in other cases where its rights could be adjudged without direct subjection to the jurisdiction of the court.<sup>2</sup> In the absence of a direct remedy, any right was necessarily precarious. The question of liability could not become a subject of profitable discussion until the question of jurisdiction was disposed of.

### I. *Jurisdiction.*

It has always been accepted as an undisputed maxim of the common law that the sovereign cannot be sued except by his own consent. This principle commended itself by the apparent cogency of its logic. The courts exercised their jurisdiction under the authority of the sovereign and their mandates issued in his name : How, then, could the king be imagined to be under the control of his own courts ? How could he issue his writ commanding the sheriff to command him, the king, to appear, *etc.* ?<sup>3</sup> The ordinary form of action would thus be inapplicable against the sovereign ; even if there had been no formal difficulties, the courts would naturally have declined to

<sup>1</sup> U. S. *vs.* Ringgold, 8 Tet. 163 ; but see U. S. *vs.* Eckford, 6 Wall. 484.

<sup>2</sup> The Siren, 7 Wall. 152.

<sup>3</sup> Chitty, Prerogative, p. 334. Blackstone, Commentaries, iii, p. 254.

entertain jurisdiction when they could not compel obedience to their decrees. Only voluntary submission on the part of the crown could secure a judicial hearing in favor of private claims against it. And this was granted in England at an early date. The petition of right, the oldest remedy, is said to have originated in the time of Edward I; another mode of redress was provided by the bill of manifestation of right (*monstrans de droit*) during the reign of Edward VI. The petition of right, though granted as a matter of grace, was regarded as the birthright of the subject, and was available where other remedies failed. Upon filing of the petition the king's fiat, "let right be done," was granted by the attorney-general, and the issues thereupon became triable either in chancery or in the court of exchequer. In these proceedings the crown enjoyed certain privileges; an interesting and forcible statement of the various defects (from the point of view of the petitioner) may be found in Brougham's famous speech on law reform. The most serious objection in theory was doubtless the lack of redress if the attorney-general refused his fiat; as a rule, however, the fiat issued as of course. It was formerly doubtful in what way effect could be given to money judgments against the crown; now the duty is laid upon certain treasury officials to pay out of funds legally applicable for that purpose; some sort of appropriation by Parliament would therefore seem to be necessary. The English law on the subject is now regulated on the basis of the former practice by 23 and 24 Victoria, chapter 34.

Neither of the remedies against the sovereign in use in England became part of the common law of the American states upon their assuming independence. In England and in the colonies, in all relations of property, the sovereignty was represented by the crown, but in this country all the rights of the crown in this respect devolved upon the people. And while, upon the constitutional organization of the people, the judiciary department succeeded to all the powers held by the courts in England, the executive became vested only with such powers as were expressed and specified in the written constitu-

tions. All residuary public power, even such as was not of a strictly legislative nature, remained in the legislature. Especially, in the absence of statutory provisions, all right of disposition with regard to the public property which had belonged to the crown, was claimed and exercised by the legislature. The legislature alone had the power to release rights vested in the people, to validate void contracts, to waive rights and defences or to recognize claims against the state for damages.<sup>1</sup> The privilege of petitioning for the redress of any grievance was guaranteed by the federal and by most state constitutions, and petitions of right respecting private claims against the government were directed to the legislature. But the English practice of delegating the investigation and adjudication of such claims to the courts was not followed, and the legislative bodies themselves passed upon all claims presented to them. Where a claim was allowed, the proper relief was given by a statute enacted for that purpose. It does not require much argument to show that this discharge of judicial functions by legislative methods must have been inadequate and unsatisfactory. The following, written with reference to the condition of things in Congress, must apply equally to any legislative body to which many private claims are presented for disposition:

Such was the extent of these claims and the difficulty of reaching the real facts in each case that few of them were ever acted upon, and many honest creditors of the United States were turned away without a hearing, and others were deterred from presenting their petitions for redress by the difficulties in the way of reaching a final determination, while it was occasionally found that upon hasty consideration or imperfect *ex parte* evidence a claim was allowed and paid which was, to say the least, of doubtful validity. Committees could not constitute themselves courts for the trial of facts. They had not the time to devote to that kind of investigation, to the interruption or exclusion of their duties to the country on the great national questions which were always pending in Congress. They could not effectively examine the plaintiff's witnesses to any great extent before themselves, and they were not sufficiently familiar with

<sup>1</sup> *People vs. Stephens*, 71 N. Y. 527, 540, 548.

the matters in controversy to be able to procure witnesses for the government. Claimants in fact presented only *ex parte* cases, supported by affidavits and the influence of such friends as they could induce to appear before the committee in open session or to see the members in private. No counsel appeared to watch and defend the interests of the government. Committees were therefore perplexed beyond measure with this class of business, and most frequently found it more convenient and more safe not to act at all upon those claims which called for much investigation, especially when the amounts involved seemed large. Moreover, when bills for relief in meritorious cases were reported, few of them were acted upon by either house, or, if passed by one, were not brought to a vote in the other house, and so fell at the final adjournment, and if ever revived, had to be begun again before a new Congress and a new committee, and so on year after year and Congress after Congress.<sup>1</sup>

These manifest evils of legislation on private claims led to the adoption in a number of state constitutions of clauses directing that legislative provision should be made for bringing claims against the state into court ; but thus far very few of the legislatures have complied with this mandate. In the absence of constitutional provisions to the contrary, it is within the legislative power to commit the adjudication of private claims against the state to the courts, since this is plainly not the delegation of a legislative function. Whether the legislature has the power to create a special court for that purpose, will of course depend upon the particular provisions of the constitutions. Neither the system adopted by the United States nor that developed in the state of New York rests upon special constitutional authority.<sup>2</sup>

Congress, in 1855, created a court of claims by virtue of its constitutional power to establish inferior courts.<sup>3</sup> Under the provisions of this act, however, the decisions of the court were

<sup>1</sup> Richardson, 17 Ct. Cl. Rep. p. 4.

<sup>2</sup> Seven of the states allow themselves to be sued, three of them in obedience to a constitutional injunction. These states are: Alabama, Mississippi, Nebraska, New York, North Carolina, Virginia and Wisconsin. In five states the constitution forbids the state to be made a party defendant.

<sup>3</sup> U. S. Rev. Stat., §§ 1049 *et seq.*; a full account of the history and jurisdiction of the court of claims is given by Justice Richardson in 17 Ct. Cl. Rep. p. 1.

reported back to Congress for special action on each separate case, and the committee of claims felt bound to re-examine each claim upon its merits. In this way the beneficial effects of the whole act were almost rendered nugatory. By an amendatory act, passed March 3, 1863, Congress provided, therefore, that all judgments of the court should be paid by the treasury out of any general appropriation made by law for the payment of private claims.<sup>1</sup> As the same act, however, provided that no money should be paid out of the treasury for any claim till after an estimate of the appropriation for the purpose should have been made by the secretary of the treasury, the supreme court held that this, by implication, gave power to the secretary to revise the decisions of the court of claims, and that such decisions, consequently, did not bear the character of judgments over which, under the constitution, the supreme court could exercise appellate jurisdiction.<sup>2</sup> The obnoxious provision was repealed in 1866, and the awards of the court of claims were from that time on recognized as final and conclusive judgments. By act of March 3, 1887, the United States circuit and district courts were vested with substantially concurrent jurisdiction with the court of claims.<sup>3</sup>

In New York, where the legislature has no constitutional power to establish other than inferior local courts, the bodies to which the adjudication of claims against the state has from time to time been committed bear merely the character of commissions; their awards have not the full force and effect of judgments. The supreme court has not been intrusted with this jurisdiction. A judicial determination of claims against the state was first felt to be a necessity in connection with the state ownership and management of canals. It was committed to a board of canal appraisers by act of 1870, chapter 321. For other claims against the state the legislature, in 1876,<sup>4</sup> created a board of more general jurisdiction, called the board

<sup>1</sup> U. S. Rev. Stat., § 1089.

<sup>2</sup> *Gordon vs. U. S.*, 2 Wall. 561; for opinion see 1 Ct. Cl. Rep., p. xxiii.

<sup>3</sup> Suppl. Rev. Stat., 2d ed., p. 559.

<sup>4</sup> Laws of 1876, ch. 444.

of audit, consisting of the comptroller, the secretary of state and the state treasurer. These two boards were finally merged in 1883 into a more independent commission, called the board of claims,<sup>1</sup> consisting of three commissioners, two of whom must be counselors of the supreme court. An appeal from the awards of this board lies to the court of appeals.<sup>2</sup> The awards are reported to the legislature, and require a special appropriation to become payable; so that now, as before, the final disposition of claims against the state depends upon legislative action. It was plainly the intention of the legislature, however, to assimilate the powers and proceedings of the board of claims to those of a regular court, and the necessary appropriations are made as a matter of course and without a re-examination of the merits of the respective claims.

Whether the determination of private claims against the government be committed to a court with full judicial powers or to a board of a special character, the view that such claims receive judicial consideration as a matter of grace rather than as a matter of right may find expression both in limitations of jurisdiction and in a number of peculiar features distinguishing the statutory remedy from an ordinary action. These special features correspond about to what are known in the civil law as *privilegia fisci*—privileges which the spirit of modern legislation does not favor. The New York and the federal statutes differ in this respect. The only advantage which the New York law gives to the state is a short period of limitation—two years—while the federal law recognizes the ordinary six years' limitation. Otherwise the federal statute is far more favorable to the government, although the tendency is to place claimant and government on a basis of greater equality. So, under the former law, no party in interest had the right to testify for the claimant,<sup>3</sup> but this provision was repealed in 1887. The government has a right of appeal in every case; the claimant only where a certain amount is involved. A new

<sup>1</sup> Laws of 1883, ch. 205.

<sup>2</sup> Laws of 1887, ch. 507.

<sup>3</sup> Rev. Stat., § 1079.

trial is granted in favor of the government at any time within two years upon any evidence of wrong, fraud or injustice ; in favor of the claimant only at the same term in which judgment is rendered and only upon the same grounds on which a new trial is granted at common law. Any fraud practised or attempted in the prosecution of the claim forfeits the claim, *ipso facto*.<sup>1</sup>

Special safeguards against fraudulent claims are certainly justifiable. The government is more exposed to fraud than an individual; and the public interest, which is the interest of nobody in particular, may justly claim the special protection of the law to counterbalance the natural watchfulness with which private interests are guarded. But the privileges of the government should not go beyond the call of such natural disadvantages. Neither under the federal nor under the New York law are issues of fact tried by a jury. This, perhaps, can hardly be called a governmental privilege, but it characterizes the nature of the relief by showing that the constitutional guaranty of a trial by jury is not considered as applicable.

Of greater importance than these *privilegia fisci*, privileges relating chiefly to procedure, are the limitations imposed upon the jurisdiction of the tribunals hearing claims against the government. Such limitations, while they do not amount to an absolute denial of the liability of the government on claims covered by them, in principle leave the claimant in the position in which all claimants were formerly: he is relegated to his common law and constitutional right of petitioning the legislature for relief. Of course the legislature can by special act provide for the judicial hearing and determination of any claim, creating a jurisdiction for that purpose. This course is frequently resorted to by Congress, and the power to refer specific controverted questions to the court of claims is also vested in either house of Congress, or any committee of either house, and in any executive department.<sup>2</sup>

<sup>1</sup> Rev. Stat., § 1086, Act of April 30, 1878.

<sup>2</sup> Act of March 3, 1883, §§ 1, 2. Act of March 3, 1887, § 14.

The jurisdiction of the court of claims originally embraced all claims founded upon any law of Congress, or upon any regulation of an executive department, or upon any contract, express or implied, with the government of the United States, and all claims referred to it by either house of Congress.<sup>1</sup> It was subsequently extended to cover counter-claims of the government, and other specific classes of cases were added from time to time. It was the evident desire of Congress to promote still further the liberal policy of allowing suits against the government which led to the passage of the act of March, 1887, known as the Tucker Act.<sup>2</sup> With certain specific exceptions this act extended the jurisdiction of the court of claims and the concurrent jurisdiction of the circuit and district courts to

all claims founded upon the constitution of the United States or any law of Congress, except for pensions, or upon any contract express or implied with the government of the United States, or for damages liquidated or unliquidated in cases not sounding in tort, in respect of which claims the party would be entitled to redress against the United States either in a court of law, equity or admiralty if the United States were suable.

This enumeration would seem to cover all private causes of action except tort. The supreme court, however, has taken a different view. Inasmuch as the law makes no express provision for the satisfaction of other than money judgments, it was held that the jurisdiction of the court extended only to money demands.<sup>3</sup>

It seems [the court said] that in point of providing only for money decrees and judgments the law is unchanged, merely being so extended as to include claims for money arising out of equitable and maritime as well as legal demands. We do not think it was the intention of Congress to go farther than this. Had it been, some provision would have been made for carrying into execution decrees for specific performance or for delivering the possession of property recovered in kind.

<sup>1</sup> Rev. Stat., § 1059. 1 Suppl. Rev. Stat., 2nd ed., p. 559, note.

<sup>2</sup> 1 Suppl. Rev. Stat., 2nd ed., p. 559.

<sup>3</sup> U. S. *vs.* Jones, 131 U. S. p. 1.



The court therefore refused to compel the issue and delivery of a land patent. Two of the justices<sup>1</sup> dissented, and the dissenting opinion says:

The manifest purpose of this new act was to confer powers which the court of claims did not previously have, and to authorize it to take jurisdiction of a class of cases of which it had not cognizance before. To say that under such circumstances the new statute is to be crippled and rendered ineffectual in the only new feature which it has in regard to the jurisdiction of that court, is in my mind a refusal to obey the law as made by Congress in a matter in which its power is undisputed. It is clear to me that Congress intended by this act to enlarge very materially the right of suit against the United States, to facilitate this right by allowing suits to be brought in the circuit and district courts where the parties resided, and that it also designed to enlarge the remedy in the court of claims to meet all such cases in law, equity and admiralty against the United States as would be cognizable in such courts against individuals.

As construed by the majority of the court in this case, the act of 1887 made but a very slight advance in the development of the right of suit against the government ; for the principle laid down in the opinion seems to cover all claims requiring specific performance and all suits in ejectment, if indeed the latter are not included in the exemption of causes of action sounding in tort — another difficult question involved in considerable doubt.

In view of the difficulties which have arisen through enumerating the causes of action in defining the jurisdiction of the court of claims, the New York law must be considered as marking a distinct step in advance. It confers upon the board of claims jurisdiction over all private claims against the state and counter-claims presented against them. The term private claims is not further defined, but it doubtless means all claims of private parties against the state, and not merely claims arising from private causes of action. This would make the jurisdiction co-extensive with the liability of the state ; in other words, the question of juris-

<sup>1</sup> Miller and Field.

diction would be eliminated entirely, and the question of liability presented as one purely of substantive law. This construction seems to be demanded by the constitutional provision prohibiting the legislature from auditing or allowing private claims<sup>1</sup>—a provision which has, however, been construed not to prevent the legislature from removing disabilities and creating legal causes of action, and referring claims thus legalized to the board of claims for judicial action and determination.<sup>2</sup>

The foregoing statement of the law with regard to jurisdiction over state and government would be incomplete unless supplemented by a reference to the various schemes devised by the ingenuity of private claimants, and especially of creditors of defaulting states, in order to overcome the plea of want of jurisdiction in cases where the sovereign power did not consent to be sued. Two of these devices may be very briefly disposed of. The defaulted bonds of Louisiana being largely held by citizens of other states, who found themselves without judicial remedy or redress, several of these states were induced to take from their respective citizens assignments of their claims in order to prosecute them before the Supreme Court of the United States, under its constitutional jurisdiction over controversies between two or more states. The suits were to be brought in the name of the state but for the use of the assignors. The supreme court, however, insisted upon regarding the actions instituted by the respective states as suits brought really by private citizens, in contravention of the spirit of the eleventh amendment, and declined to take jurisdiction.<sup>3</sup> The second device was still more ingenious. The eleventh amendment prohibited only suits against one of the United States by citizens of another state, and was silent as to suits brought against a state by its own citizens. Now it was argued that the judicial power of the United States, irrespective of parties, extended to all cases in law and equity

<sup>1</sup> Art. 3, § 19.

<sup>2</sup> *Cole vs. State*, 102 N. Y. 54; *O'Hara vs. State*, 112 N. Y. 146.

<sup>3</sup> *New Hampshire, vs. Louisiana*, *New York vs. Louisiana*, 108 U. S. 76.

arising under the constitution and the laws of the United States, and that by the act of March 3, 1875, the federal circuit courts were vested with jurisdiction in similar terms, likewise irrespective of parties; consequently it was urged that the circuit court might take cognizance of a suit brought by a citizen against his own state on a federal question.<sup>1</sup> The supreme court, however, again stood upon an historical rather than a literal construction of the constitution, and held that the cognizance of such suits, which were unknown to the law when the constitution was framed, was not contemplated by its provisions.<sup>2</sup>

Under any broad and liberal interpretation of constitutional provisions these two attempts to obtain jurisdiction over a state against its consent were doomed to failure; upon an entirely different footing stands the third plan. Under our system of jurisprudence the courts have always to a certain extent exercised jurisdiction over the agents of the government; the administration has never claimed for its officers that complete immunity from the process of the civil courts in matters belonging to its own province, which in France was insisted upon as an essential part of the principle of the separation of powers, and which there led to the creation of a system of administrative courts. But state and government can act only through the persons of officers, and the question arises: How far does the jurisdiction over officers enable the courts to control the action of the state, and thus serve as a substitute for the wanting jurisdiction over the latter?

We must in this respect distinguish different cases. The courts may hold certain classes of officers liable in damages for non-feasance or malfeasance in their duties, but it is clear that this personal liability of the officer does not directly affect the action or the property of the state: in other words, the jurisdiction over officers affords no means of imposing a liability in damages upon the state or government. It is

<sup>1</sup> This reasoning seems first to have been suggested in the case of *Harvey vs. the Commissioners*, 20 Federal Reporter, 411.

<sup>2</sup> *Hans vs. Louisiana*, 134 U. S. 1.

otherwise where the relief demanded is specific in its nature — where it is sought either to compel an official act by the prerogative writ of mandamus, or to enjoin it by the equitable remedy of injunction, or to recover specific property or funds by the proper common law remedies. No doubt a judgment against the officer in these cases operates against the government in whose behalf he acts. And as a matter of fact this jurisdiction has always been used to subject the action of the administration to an effective judicial control. But the theory and frequently the fact is, that in these cases the courts really enforce the will of the state against the unlawful refusal of its agents to perform their duties; the jurisdiction of the courts is held to aid the administration, not to constrain it. This theory, however, becomes untenable where the state clearly asserts adverse rights, or where the judgment of the court virtually decrees specific performance of contracts which the state has distinctly repudiated by law; for in the latter case the law, even if unconstitutional, cannot be counteracted save through interference with the whole machinery of the government, the compulsion of its highest executive officers and a control of the public funds.

In cases of this kind the plea has always been advanced that the suit, while nominally against the officers, was in reality against the state or government, and therefore beyond the jurisdiction of the court. This plea of want of jurisdiction has confronted the United States Supreme Court in a number of important cases.<sup>1</sup> On principle the court has in its more recent decisions taken the stand that it will look behind the parties of record, and hold the suit to be against the state where the property and the interest of the state are thus directly involved. But on the other hand it will sustain the action where a distinct and specific right of person or property is asserted, and protection or relief is sought against its threatened or consummated invasion by the act of officers asserting an authority which is held to be void. The distinction has been carried to such a point of refinement that

<sup>1</sup> Beginning with *Osborn vs. Bank*, 9 Wheat. 738.

in some cases it seems to resolve itself into the question whether the relief sought is affirmative, when it will be granted, or negative, when it will be refused.<sup>1</sup> Suits have been entertained against the highest executive state officers, from them from issuing patents to lands claimed by them, although the right of the latter was merely equitable, although legal title had not been perfected.<sup>2</sup> As one of these suits has since been pronounced to go to the verge of soundness, it is probable that the supreme court would refuse to grant, and affirmatively order the issue of a land patent. The court held an action to be improperly brought against a governor of Georgia for the foreclosure of a mortgage on a railroad, where the state held possession and the legal title, on the ground that the state was not only the real but the indispensable party to the action.<sup>3</sup> This case, too, must be decided on the ground that the relief sought was not in its character; for the mere fact that a question was presented between the claimant and the state is involved does not necessarily oust the jurisdiction of the courts. Such was the inevitable conclusion from the decision in the case,<sup>4</sup> where the jurisdiction over officers was applied in a manner as almost to nullify the exemption of the officers from suit. This was an action in ejectment brought against officers holding on behalf of the government of land to which the United States claimed title. The United States appeared for the sole purpose of objecting to the jurisdiction of the court, on the ground that the real party defendant was the government. The court, by a bare majority, held the action maintainable, and gave judgment in favor of the plaintiffs. The decision really amounts to an evasion of a substantial principle of law by an expedient; for the prerogative of the sovereign power cannot be sued in its own courts in an action of ejectment.

<sup>1</sup> Compare *Board of Liquidation vs. McComb*, 92 U. S. 531, with *Jumel*, 107 U. S. 711.

<sup>2</sup> *Davis vs. Gray*, 16 Wall. 203. *Pennoyer vs. McConaughy*, 140

<sup>3</sup> *Cunningham vs. Macon, etc. R. R. Co.*, 109 U. S. 446.

<sup>4</sup> *U. S. vs. Lee*, 106 U. S. 196.

worthless if its instruments of action, by which alone it can accomplish its purposes, can be substituted in its place. If the sovereign immunity from civil suits is to be upheld, it should be loyally and logically applied; if it leads to such intolerable consequences and is so contrary to justice and the spirit of our law that the courts must seek to evade it, then the whole principle should be condemned and abandoned. This latter view seems to have dictated the prevailing opinion in the Arlington case: the principle was examined in both its theoretical and its historical aspects, and was found to be antiquated.

There are evidently cases where justice demands the adjudication of rights against the state, while the logic of the law apparently forbids it. Apparently, for the conflict is not real. It is believed that subjection to the jurisdiction of the courts is inconsistent with the nature of sovereign power. It is true that the courts themselves derive their power from the state. But the state is an exceedingly complex organism, and its functions are widely divergent. It is guided by proprietary interests, like an individual, in the management of its corporate funds and domain; by public, as opposed to private, interests in the general political administration; while its aim in the dispensation of justice is the purely ideal one of the preservation of law and of rights. The concentration of these various functions in one power would be impossible without a separation of organs. Therefore, the administration of justice in every civilized state is vested in organs which are, to all intents and purposes, independent of the government in the narrower sense of the term. Consequently, when the state appears before the courts on a question of property rights, a party in interest appears before an impartial arbiter, and the proceeding is not open to the objection that the state is judge in its own cause. Thus, on a true conception of the nature of the judicial power, the subjection of the state to the jurisdiction of the courts involves no inconsistency of functions. At the same time, the state retains its identity in the different spheres of its action;

it can use or abuse its sovereign power so as to control or pervert any of its functions. It would, therefore, be absurd to deny that the state can refuse to submit to the jurisdiction of its courts. But why, in the absence of a distinct expression of will, either by the constitution or by the legislature, should a tacit refusal be implied rather than a tacit consent? Would it not be reasonable to assume such a consent where the state descends from the plane of its sovereignty and enters into purely private relations, that is to say, in all civil causes of action?

It is urged that such submission to the jurisdiction of the courts would be against public policy, on the ground that it would be inconvenient and intolerable for the state to defend every executive act in a court of law. But does not the law afford sufficient protection by asserting a complete immunity from liability on the part of the state in most of its relations, just as a similar immunity has been found adequate to prevent vexatious suits against judicial and high executive magistrates, who yet are personally subject to the jurisdiction of the courts? Another argument drawn from public policy is that it would not do to vest the courts with power over the public funds and revenues.<sup>1</sup> But this argument overlooks the point that jurisdiction to hear and determine claims does not necessarily carry the power to enforce them. The position of the state in this respect is different from that of a municipal corporation. Where a judgment is recovered against the latter a court can issue mandamus to its governing body to compel the levy of a tax sufficient to satisfy the judgment; but the governing body of the state is beyond the reach of the process of the courts; and even where a continuing power to levy a tax in favor of creditors is vested in the financial officers of the state, the United States Supreme Court, at least, holds that an action against them is not maintainable, because it is virtually an action against the state.<sup>2</sup> Effective relief against

<sup>1</sup> *Briggs vs. Lightboats*, 9 Allen, 157, 162; *Corkings vs. State*, 99 N. Y. 491, 499.

<sup>2</sup> *Louisiana vs. Jumel*, 107 U. S. 711; *Hagood vs. Southern*, 117 U. S. 52; *North Carolina vs. Temple*, 134 U. S. 22.

the state could be secured only by making all judgments payable out of its unappropriated funds, or, where that would be unconstitutional, by allowing execution against its private property.

It doubtless affords the strongest theoretical argument against the jurisdiction of the courts over the state, that they are powerless to enforce their decrees. Courts do not usually take cognizance of causes unless they are able to grant effective relief, and it has been held that the mere right to sue without the right to enforce judgment is not a judicial remedy.<sup>1</sup> But this objection is theoretical rather than practical; for what is usually sought by the claimant, and what is demanded by the principles of individual right, is an opportunity for judicial hearing and determination of claims against the government; while the compulsion of a defaulting state presents a different question, which is beyond the province of civil jurisdiction. Where the state is suable at present, therefore, the tribunal as a rule has authority merely to determine claims, not to enforce them.<sup>2</sup>

But whatever may be the arguments in favor of this jurisdiction, the law is well settled against it, and is on the whole still strenuously supported by the current of judicial opinion. A change can therefore be brought about only by statutory enactment. The example of the national government and of the most powerful of the commonwealths cannot but aid a development which is so much in accordance with the spirit of modern private law.

## II. *Liability.*

The statutes which provide a tribunal in which the government can be sued are generally silent on the question of liability. By implication they assume the possibility of legal claims against the government, and they seek to create a forum with authority to determine them. If, then, some legal liability existed before the remedy, and if it was neither defined nor

<sup>1</sup> R. R. Co. *vs.* Tennessee, 101 U. S. 337.

<sup>2</sup> Carter *vs.* State, 8 Southern Reporter, p. 836.



A liability distinctly created by sovereign or governmental act or by contract, presents comparatively few difficulties. A money claim may arise under a constitution, where that instrument fixes the compensation of certain officers or forbids its reduction during a term of office; perhaps, also, where it provides that private property shall not be taken for public use without just compensation. A claim may arise under statute, not only where legislation directly provides for the payment of money, but in all the numerous cases where a liability is created for damages suffered through the act of the government or its officers. Whether a statute creates an individual right against the government, depends sometimes upon the nature of the relation; where, for instance, the law provides a salary for an office, the right to payment attaches, not to the appointment or to the legal title, but to the tenure of the office and the performance of its functions.<sup>1</sup> Government contracts, including loans, are on the whole governed by the ordinary rules applying between private parties, except, of course, in so far as the subject is regulated by statute.<sup>2</sup> Statutory provisions regarding contracts—authority to conclude, form, *etc.*—are very frequent, and modify the general law with respect to nearly every important class of public contracts. Most cases will, therefore, involve questions of statutory construction, not so much perhaps as to the obligations under the contract, as on the point of its validity in its inception. In this respect the government stands on a different footing from individuals and private corporations. Private contracts are as a rule informal, and the apparent and ostensible authority of the agent may bind the principal; but every one dealing with government officers is bound by their actual authority, by every requirement of form, even by the amount of appropriations, which may limit the power to incur obligations;<sup>3</sup> and this not only because all conditions precedent are matters of public law, of which every one must

<sup>1</sup> *Butler vs. Pennsylvania*, 10 Howard, 402.

<sup>2</sup> *Donald vs. State*, 89 N. Y. 36.

<sup>3</sup> *Shipman vs. U. S.*, 18 Ct. Cl., p. 138; *Dunwoody vs. U. S.*, 143 U. S. 578; U. S. Rev. Stat., § 3679.

take notice, but because it is a vital principle of public policy that the expenditure of public moneys should be hedged in by the strictest rules of law.

The federal statutes give the court of claims jurisdiction on implied contract, thus recognizing a possible liability on this cause of action. The term "implied contract" is vague enough to admit of a certain latitude of construction. It may mean a real contract resting upon concludent acts; this meaning seems to be within the language of the statute when it says: "contract, express or implied, with the government." But we also speak of implied contract when there is an obligation, not at all contractual, but created by law in order to prevent unjust loss or gain, incurred or made without consideration and against the reasonable and presumable intention of the parties. Such implied contract is likewise within the jurisdiction of the court of claims; for it has been defined to embrace cases of a consideration moving to the government, money received by the government to the use of others and money paid by mistake.<sup>1</sup> The practice of the United States Supreme Court in recognizing obligations on implied contract seems somewhat uncertain. So it has been held (not in a case against the government) that while the official relation does not constitute a contract as to compensation, yet, after the duties have been performed, an implied contract springs up for the payment of the salary.<sup>2</sup> The claim was here, in fact, based upon the statute, but the theory of an implied contract made it possible to bring a later statute, taking away the salary, within the constitutional prohibition of laws impairing the obligation of contracts.

It is generally held with regard to municipal corporations that where a public contract requires certain conditions as to form or otherwise which are disregarded, an obligation on implied contract will not arise from performance, because the purpose of the requirement might otherwise be nullified. But the United States Supreme Court takes a contrary view and allows recovery against the government on implied contract in

<sup>1</sup> *Knote vs. U. S.*, 95 U. S. 149.

<sup>2</sup> *Fisk vs. Police Jury*, 116 U. S. 131.

such cases.<sup>1</sup> The greatest difficulty, however, is encountered in distinguishing between implied contract and tort in cases where the government, through the unauthorized act of its officer, has received and is in the enjoyment of some benefit at the expense of some individual. An instance or two will illustrate this. Where an inventor is in constant communication with the government officers, exhibiting his inventions and urging their adoption, and they use a device covered by his patent, a contract to pay a reasonable royalty will be implied ;<sup>2</sup> but where the United States made use of a patented process against the remonstrance of a patentee, it was held that the court of claims was without jurisdiction, as no contract to pay could be implied.<sup>3</sup> Compensation has also been allowed, on the theory of implied contract, for the appropriation of private land to public use, where the government asserts no title and where the land can be held to have been taken under right of eminent domain.<sup>4</sup> But no implied contract to pay will be raised, where the possession of the land has been acquired and maintained under a different and adverse title,<sup>5</sup> or by the tortious act of an officer of the government.<sup>6</sup> From these cases it would appear that an implied contract requires the existence of some contract relation between the parties, some dealing with the claimant on the basis of his acknowledged right ; in one case at least, however, it has been held that where money of an innocent person has gone into the treasury of the government by fraud to which its agent was a party, such money can be recovered on implied contract.<sup>7</sup> But on the whole the liability on implied contract has not been allowed to be used as a means of impairing the immunity of the government in cases where it can make out a clear case of tort. The clearer the legal wrong and the more unjustifiable the act complained of, so

<sup>1</sup> *Clark vs. U. S.*, 95 U. S. 539.

<sup>2</sup> *U. S. vs. Palmer*, 128 U. S. 262. *Berdan's case*, 26 Ct. Cl., 48.

<sup>3</sup> *Schellinger vs. U. S.*, 24 Ct. Cl., 278.

<sup>4</sup> *U. S. vs. Gt. Falls Manuf. Co.*, 112 U. S. 545.

<sup>5</sup> *Hill vs. U. S.*, May 15, 1893.

<sup>6</sup> *Langford vs. U. S.*, 101 U. S. 341.

<sup>7</sup> *U. S. vs. Bank*, 96 U. S. 30.

much more undisputed is the exemption from legal liability.

For if the law appears to be well settled on the government, as a matter of principle, is The federal statutes expressly exclude causing in tort from the jurisdiction over the immunity is recognized by law without dictional limitations. It exists where, as state can be sued on any cause of action. for tort may be, and has been, placed on var it is said that the tortious act can be comn the agency of an officer, and that the act o the act of the government. This is the fa *vires*, which has been repudiated by the co ordinary corporations. It has also been neglect of duty or wrongful conduct is ne government — that the sovereign must be pable of committing any wrong. This, argument, but a convenient fiction. It ha that no liability can in any case be fastene ment except by its own consent, and that be held responsible for any tort until it has such liability.<sup>1</sup> Nothing more simple an explanation, if it could be made to harm of right and justice. To satisfy this, tl public policy has been used very frequen confidence. In the language of Judge been quoted repeatedly by the courts,

it is plain that the government itself is not misfeasances or wrongs or negligences or o the subordinate officers or agents employed ir for it does not undertake to guarantee to ar any of the officers or agents whom it emplo involve it in all its operations in endless difficulties and losses, which would be subv interests.

<sup>1</sup> *Rexdorf vs. State*, 105 N. Y. 229.

And the United States Supreme Court, quoting these words, adds :

The general principle which we have already stated as applicable to all governments forbids, on a policy imposed by necessity, that they should hold themselves liable for unauthorized wrongs inflicted by their officers on the citizen, though occurring while engaged in the discharge of official duties.<sup>1</sup>

But, whatever the reasoning relied on, the principle itself has always been regarded as firmly established and has never, it seems, been questioned or denied by the courts.

Yet it may be interesting to inquire further into the principle, even at the risk of going into a discussion somewhat theoretical in its nature ; for a tort, far more than a contract, is apt to raise and involve fundamental questions of rights and legal relations.

Again it will be proper to make certain distinctions. It is of the essence of government, and therefore the highest duty of the state, that it should assume certain functions affecting the citizens—the preservation of the peace ; the protection of person and property ; the administration of justice ; the promotion of the public welfare. But these duties constitute no civil obligations ; they are beyond the operation of the ordinary rules of law. Some of these duties are perhaps capable of being raised into legal liabilities ; as, for instance, if the state should hold itself responsible for damage done to property in consequence of riots, as it does in Germany, or as municipal corporations are frequently held in this country. As a rule, however, these duties are of such a nature that they cannot bind the discretion of the sovereign power ; these obligations correspond to no private right on the part of any individual citizen, and they produce no private cause of action.

But the question of private right may arise in opposition to the action of the state, and it may present itself in two entirely different relations. In the first place the action of public officers representing the state in the exercise of public

<sup>1</sup> *Gibbons vs. U. S.*, 8 Wall. 269, 274.

functions may exceed the bounds set to it by the constitution, and may invade or violate in person or property. In the second place, the state enters into relations with its citizens similar to those between citizens individually, into which the state power does not enter, or enters but remotely in connection with such a relation, by act of some injury upon a private right. This is familiar to the continental law of Europe, and has once been recognized incidentally in the decisions of our courts, but has remained barren of legal consequences based upon intrinsic differences in the action which may accomplish its purposes either by direct command or by using contract and property, and which may become vested with rights in connection with its public functions.

Now, where the relation is that between a public subject, *i.e.*, authoritative in character, and a private individual, inflicted upon private rights in various ways, in the exercise of functions entrusted to him by lawful authority: he may use excessive force, if he has no power to do so; inflict greater injury than the law allows or the case warrants. (1) He may invade private rights under an authority which is but resting upon an unconstitutional statute, or mistake his authority where the law is doubtful, or his action depends upon the existence of a fact which he may err as to the true state of facts. It is in all these cases the state has no concern, and it is done, that it is the personal act of the officer. This is the theory of our law; valuable in that it places personal liability on the part of the officer, and as it denies any connection of the state with the act, it is tantamount to the general theory obtaining with the continental nations — that, since every authority involves the possibility of its abuse, they are responsible for the wrong done within the sphere of their employments.

Assuming the wrongful act to be imputable to the state — incident to the unavoidable imperfections of a machinery so complicated as its system of administration, the state enjoys, of course, by virtue of its sovereignty, the privilege of exempting itself from liability. A government which should hold itself responsible to all its citizens for any legal injury suffered by them through the exercise of public powers,— which, in other words, should guarantee the just and perfect operation of its administrative and judicial machinery, might find itself confronted with claims and vexed with suits to such an extent as to be driven to a limitation of its liability. But leaving aside considerations of public policy, the view that the tort is an act of the government by no means entails the government's liability as a logical conclusion. The rule that a tort creates a liability for damages is a rule of private law ; it therefore applies to relations of the private law only. The position of the state, where it acts in the exercise of sovereign and governmental functions, is, however, entirely beyond the sphere of private law, and must be judged by different standards. If the courts were called upon to administer abstract justice, they might find ample ground in many cases for decreeing reparation of legal injuries by the state ; but applying, as they have to, principles of the common law, they cannot evolve a liability of the state in its sovereign capacity, for the reason that governmental functions do not create civil causes of action, and that rules of private liability are inadequate to govern cases where no private relation exists. Where justice demands that the government should be made responsible for damages suffered through misconduct in the exercise of its public powers, express statutory enactment is required to create such liability.

The state, however, in dealing with the citizen, does not always act in the character of a sovereign who commands and compels, as a representative of law and authority ; it can by virtue of its corporate capacity equally well entertain relations of the private law, becoming a holder of private rights and treating with individuals on a basis of equality. In order to

determine whether the state acts in a private law capacity, it is not always sufficient to analyze a particular transaction without reference to the purpose which it subserves and the system of which it forms part. We can imagine a contract between individuals for the carrying of letters ; but the postal service of the government forms a great public institution, in which the element of profit is subordinate, the payment is disproportionate to the service rendered, and the rules of contract with its incidents are therefore to a great extent inapplicable. A payment of money into court is in form similar to a deposit under the private law ; yet, such payment being merely a mode of protecting private rights that is auxiliary to the administration of justice, the government in receiving the money does not enter into a civil transaction and does not assume all the obligations of a depositary. Gneist therefore justly remarks that the liability of the consolidated fund in England for private deposits embodies a principle formerly unknown to English administrative law.<sup>1</sup> The fact that prisoners are held to labor does not fasten upon the state an employer's liability ; for the employment is merely an incident to the prison discipline, and the state is therefore not liable for injury suffered through defective implements.<sup>2</sup> The same view is generally taken where the holding and management of property is required by some public function of the state, although it would be easy and proper in such cases to sever the element of beneficial ownership from the public functions to which it is incident (especially in cases of negligence in the care of public buildings).

But there are cases where the relation to which the state is a party is clearly private — where there is no direct connection with governmental or public functions. So where the government happens to manage industrial enterprises, where it owns lands escheated or forfeited to it, where it acquires railroad property through foreclosure of mortgages held by it, where it enters into contracts for the furtherance of its beneficial interests. Now whenever the government thus stands in t<sup>1</sup>

<sup>1</sup> Gneist, *Das Englische Verwaltungsrecht*, II, 1031.

<sup>2</sup> *Lewis vs. State*, 96 N. Y. 71.



position of a holder of private rights, all arguments in favor of its immunity from tort that are drawn from public policy or from the nature of governmental functions, fall to the ground. In such a relation, its sovereignty need in no wise be involved — is, indeed, a mere accident. The obligations incident to the holding of property and the carrying on of industries are imposed by the conditions of social existence, and are essential to the proper functions of ownership. The justification of any exemption from these obligations must be found, not in the privileged position of the owner, but in the exceptional nature of the purposes for which the property is used. Granting that the state can hold property for purposes similar to those of an individual owner, it follows logically that it should hold on similar conditions. A privilege which cannot be explained by the public functions and powers of the state is anomalous.

The principal torts which may be imputable to the government in connection with its private relations, are negligence, non-compliance with statutory regulations, nuisance, trespass and the disturbance of natural easements. It is characteristic of these torts that they violate obligations which are cast by law upon the ownership or occupation or control of property, that they are sometimes not directly attributable to a specific act of any particular agent, and that the existence of the wrongful condition is usually of some benefit to the owner. The liability of the state in these cases is demanded not only by justice but by the logic of the law; its immunity cannot be placed upon any convincing arguments. It is to be regretted that the courts have always denied the liability of the sovereign in sweeping terms; but the cases so far decided do not perhaps absolutely preclude the acceptance of a more satisfactory doctrine.<sup>1</sup>

In order that the view here taken may not be regarded as theory pure and simple, it may be proper to corroborate it by the analogy of another department and of other systems of law. A municipal corporation, it is true, is no sovereign body; yet it is an integral part of the organization of government. The

<sup>1</sup> See *Ballou vs. State*, 111 N. Y. 496.

incorporation enables it to hold private rights and at the same time subjects it to the jurisdiction of the courts; its public functions are nevertheless governmental in character. Therefore, like the state, the municipality cannot be held liable for torts committed in the exercise of its delegated governmental powers; the public relation protects it from private responsibility. But where it acts in a private or corporate capacity for its beneficial interests, its liability for tort is clear.<sup>1</sup> Now the state, like the municipal corporation, can have private and beneficial interests, and it may likewise be subjected to the jurisdiction of the courts. If then the analogy of the state protects the municipal corporation from liability in its public relations, the analogy of the municipal corporation should make the state liable in its private and beneficial relations.

The law of Germany and France protects the administration from interference by the courts to an extent unknown to our law; yet it is well settled that the state, by entering into private relations, subjects itself to the jurisdiction of the civil courts and becomes liable like any other holder of private rights. The discussion in Germany as to whether it should be held liable on tort has turned only on the general question, whether a corporation can become liable for the torts of its agents; the immunity has never been asserted on other grounds, and the responsibility for torts committed in connection with purely private relations appears now to be the accepted law in both countries.<sup>2</sup>

A liability in tort would of course be barren if there were no jurisdiction over the state, but so would a liability in contract, which is yet undoubted. The liability, to be effective, demands the possibility of suit against the government, but as a matter of theory and principle the question of liability is independent of that of jurisdiction.

It may be well to summarize the conclusions arrived at in the course of these remarks, both as to the actual law and as to its possible improvements:

<sup>1</sup> Dillon, *Municipal Corporations*, §§975-985.

<sup>2</sup> Meyer, *Deutsches Staatsrecht*, §149. Mayer, *Französ. Verwaltungsrecht*, §58.

1. Jurisdiction cannot be exercised by the courts over the state except by its consent. This consent may be, and partly is, embodied in statutes providing permanently for suits against the government, with or without limitations of jurisdiction. Such jurisdiction should be generally recognized, at least with regard to private causes of action.

2. Where jurisdiction over the state does not exist, the courts should not take cognizance over suits against officers, to which the state would otherwise be a proper or necessary party. Such is the recognized law, with this modification, that the courts will enjoin an actual or threatened invasion of private property under pretended authority of the state.

3. Jurisdiction over the state does not mean power to enforce judgments against the state. All that can be required is a judicial examination of claims. Compliance with the judgment must be secured by statutory provisions or left to the legislature.

4. An expressly assumed obligation creates a legal liability on the part of the state.

5. A tort committed in the exercise of governmental functions creates no private cause of action against the state; where a liability is demanded by justice, it must be created by statute.

6. A tort committed in connection with private relations should give rise to a corresponding civil liability, with such statutory exceptions as may be dictated by public policy. This is not the recognized law, but seems to be demanded on general principles.

If some of these conclusions still rest in theory, it should be remembered that a true theory often foreshadows the actual development of the law; in so far as they are not recognized, it seems that the government places itself beyond the pale of those principles which constitute what the Germans call the *Rechtsstaat*.

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villainage an extraordinary dearth of information yet prevails. The very complications of the tenure tempt to indolence and excuse inexactness. Whether his conclusions be accepted or not, Mr. Vinogradoff has at any rate amassed sufficient material and reduced it to a compass moderate enough to exclude the plea that a knowledge of the subject is not readily attainable.

Every one knows that the first thing a legal text-book has to say of villainage is that there were two kinds of villains, "villains regardants" and "villains in gross." The terms have suggested, with a force that not even the industry of Mr. Freeman could resist, that the first represented the ceorl, or free Saxon peasant, the last the theow, or Saxon slave. Mr. Vinogradoff, after reference to the Year Books, comes to the conclusion that they were mere lawyers' terms of art and "have nothing to do with a legal distinction of status." Now, it is no doubt true that the terms do not indicate two degrees of servitude. On the other hand, I hold that they mean something, and that something, a closer or laxer connexion with a manor. Mr. Vinogradoff prints in his Appendix II a very interesting case from the Year Book of 29 Edward III, where it is expressly urged that a man when he was, to quote the grotesque law French of the original, "allant et walkant a large a sa frank volunte come frank home," could not be said to be a villain regardant to a manor. And, with a frankness that almost disarms criticism, Vinogradoff himself acknowledges that Littleton, in declaring that a claim to a villain in gross is proved by prescription, is "not quite consistent" with his own exposition that "if the lord has to rely upon prescription, he has to point out the manor to which the party and his ancestors have been regardant, time out of mind." The two statements are in truth contradictory. The fact is that lawyers' terms of art come into being in a perfectly natural way. They are devised to express actually existing distinctions—the ossification, so to speak, of custom. They register; they do not create. Social changes empty them of their content in time, and they degenerate into mere instru-

ments of legal ingenuity — an apparatus of cabalistic signs for the confusion of laymen. To this level had these distinctions between villains sunk by the end of the sixteenth century. But that they once had an effective meaning is disclosed by a remark of Coke as to the right of action of a villain against his lord “for the death of his father, or of his other ancestors, whose heire he is.” “There is no diversitie herein,” Coke writes, “whether he be a villain regardant or in grosse, *although some have said the contrary.*” If the distinction between the two terms was originally what I take it to have been, it is quite intelligible that, while the right of action might be thought to lie with the lord of a villain regardant, it might be personal in the case of a villain in gross.

The main question as to the origin and significance of the terms is very full of difficulties, and neither the summary dismissal of them by Mr. Vinogradoff nor any solution that has been suggested conveys with it full satisfaction to the mind. Mr. Vinogradoff rightly goes back to the fountains of knowledge. He has traced the terms villain regardant and villain in gross through the Plea Rolls as far back as the reign of Edward II, before which time they do not appear to have existed. They both described the lowest class of dependents. This, we may remark, is confirmed by the precedents of grants and manumissions in Madox's *Formulare Anglicanum*, in which it is noteworthy, as will presently be seen, that while a “native” might be regardant to a manor, not one of the sales speaks of a villain regardant or even of a villain. We know from Britton and from Andrew Horne, the author or editor of *Le Myrrour des Justices*, that a “serf,” to use the language of *Le Myrrour* — a “native,” according to that of Britton — was annexed to the frank tenement of his lord. If he fled, his lord might pursue him as his chattel, apprehend and bring him back into his fee. Now, in the case printed by Mr. Vinogradoff in his Appendix II, taken from the Year Book of 29 Edward III, this doctrine is laid down of villains regardants. It is the right of the lord to take them at will. It is not, therefore, a violent inference that serfs, or

natives, and villains regardants were the same in legal status. We have a further indication of this in the statement of Littleton that a villain regardant could be granted away from a manor and then become a villain in gross. Clearly, if this were true of tenants in villainage generally, they might all have been reduced to serfdom, and could not be said, as they were said, to be *ascriptitii*. Serfdom is also implied in the case in question. The "master" pleads (*a*) that the servant was his "villain regardant" to the manor of C, and (*b*) that he was master of his services *and of him*.

Who, then, were the villains in gross? They were serfs unattached to any holding. Descended of servile parents, they were serfs in blood who, on payment of an annual "chevage," or head-money, by way of acknowledgment of their status, were allowed by the lord to seek their fortunes outside the manor. Britton speaks of these, "who hold nothing in villainage"—the terms villain regardant and villain in gross being somewhat later than his time. Blackstone understood the distinction and points to it by calling villains in gross villains "at large." Sometimes the chevage was compounded. The non-compounding *capitagii*, that is, of course, the great majority, were sworn to continue their payments. "As long as they pay chevage," Bracton tells us, "they are said to be under the authority of their lords, nor is the power of their lords dissolved; and when they cease to pay it, they begin to be fugitives." The chevage was the evidence of the prescription which, according to Littleton, had to be proved.<sup>1</sup> The personal relation of the lord to the serf was left; the praedial relation had ceased to exist. This is indicated by the plea given by Britton as, apparently, the equivalent of the later plea of villain regardant. According to Britton, it was incumbent on the lord to prove that the villain claimed was his "astrier," the Anglo-Saxon "heord faest," and "resident in his villainage." Mr. Vinogradoff, who

<sup>1</sup> Mr. Furnivall, in *Ballads from Manuscripts*, I, 14-15, gives a Scotch deed of 1220 by which the Prior and Convent of St. Andrew's grant a license to their "nativus," G. M. "quod erit cum domino I," on condition of the yearly payment of one pound of wax.

mentions this, does not seem to see clearly how this formula stamps the difference between the two. His summary (page 56) that "villain in gross" means a villain without further qualification, while "villain regardant to a manor" means villain by reference to a manor, is scarcely adequate.

The disappearance of the system implied in the term villain in gross was due to a combination of various causes. The rule that a sojourn on land of ancient demesne of the king or in a chartered town for a year and a day conferred enfranchisement was largely taken advantage of. The expense of searching for and reclaiming fugitive serfs must have far exceeded their value when recovered, and the lord would often save his pains and his pocket by levying the chevage on the serf's pledges or relatives, as an example given by Mr. Vinogradoff from the Common Plea Rolls of 29 Edward III shows us sometimes happened. Above all, the pestilences of the fourteenth century and the enclosing movement which followed them must have finally accomplished the change. It became the interest of the lords to replace men by sheep, as Sir Thomas More complains in the *Utopia*. They probably offered no obstacles in the form of exactions to any one who might seek to leave their manors. On the contrary, as we know from the demands of the insurgents of 1536, they raised their fines on renewals of leases of demesne. The arrangement which had originated in pecuniary considerations on both sides naturally came to an end when those considerations were reversed.

In dealing with the rights and disabilities of villains Mr. Vinogradoff throughout his work appears to halt between two opinions. The first essay conveys the general impression that the villains were a servile class, wholly dependent upon the will of their lords for such concessions as in course of time they may have received. On the other hand, the drift of the second essay is to show that behind the manorial system lay the superseded but still partly operative organization of the free community. To establish this—and this I regard as the most valuable portion of Mr. Vinogradoff's work—it was necessary to emphasize all those legal incidents of villainage

which redeemed it from servitude. The two parts of the work do not hang together.

It may be said that the business of the historian is to stick to truth and not to elaborate systems which can only be made to accommodate facts by resort to the Procrustean method. As a general proposition that is incontestable. The fault that may be urged against the first of Mr. Vinogradoff's essays is that while he accumulates an immense mass of valuable facts, he is himself somewhat overwhelmed by them, and has failed to grasp the key to the problems they present. In his first essay there is a general identification of the terms *servus*, *villanus* and *nativus* with respect to personal condition as well in actual practice as in legal theory. As to the latter, there is *prima facie* something to be said in favor of the identification, though even here there are, as I shall presently show, two sides to the question. Of this Mr. Vinogradoff appears to have become aware by the time he had reached his appendix. But if practice conformed to theory, how could a peasantry indiscriminately reduced to serfdom have attained freedom, unless by some emancipating act like that of Alexander II in Russia? The fact is that there were two schools of law. The one, based upon the Roman codes, has survived in the pages of Bracton and Britton. The other has been handed down to us only in *Le Myrrour*, though we may take it that the author of the unfinished *Quadripartitus*, lately re-discovered by the German scholar Liebermann, belonged to the same school. But *Le Myrrour's* superior fidelity to English usage is discernible from the compilation ascribed to Ranulf Flambard, called the Laws of William the Conqueror, from the Laws of Henry I and from the Great Charter.

This is not the occasion to enter at large upon the merits of these rival schools. In his Appendix III Mr. Vinogradoff gives an interesting review of *Le Myrrour*. But in my opinion he fails altogether to do it justice, and his work has suffered by his neglect to draw from it. According to Coke, *Le Myrrour* was written not later than the reign of Edward II. It consists of two portions, of which the latter undoubtedly



belongs to that age, the former to an earlier period. It is with this earlier portion, in connexion with villainage, that we are specially concerned. The book as a whole is a conservative exposition of the law of England, written as a protest against the Romanizing tendencies of Bracton, Fleta and Britton. It sets forth the rights of villains in general accordance with the codes I have cited, as well as with the general practice of the courts. To the courts such codes, or at any rate the usages they embodied, and not the abstract principles of the civil law, furnished the precedents of decisions. And the leanings "in favor of liberty" which marked them were reinforced by the precepts of the church. I do not desire to underrate the work of Bracton or of Britton or of Fleta. But when we find all three of them servilely copying out the titles of Justinian's *Institutes* and presenting them to us as the principles of law recognized in a country where Justinian's *Institutes* had been practically unknown, we may well hold their testimony suspect. And we find in page after page of these authors facts disclosed which are wholly incompatible with their initial principles. How, for instance, if the villain was a slave, did the courts come to allow him to be capable of an independent contract with his master? How, if all he had was his lord's, could he purchase and hire from his lord? How did the courts evolve from such principles the practice of protecting him in his holding when he had duly performed his services? The doctrines of Bracton and his school as to villainage are not merely inconsistent with *Le Myrroure*, with the codes and with the practice of the courts: they are inconsistent with themselves. But by these great names Mr. Vinogradoff has been led astray. The investigator who sets out with the assumption that villains, serfs and natives are one and the same in origin, in rights and in disabilities, inevitably loses himself in the labyrinth of facts which seem to point at one time to their common servitude, at another to the comparative independence of villain tenants.

While the documents to which reference has been made were, in the spirit of *Le Myrroure*, careful to maintain the rights of villains, the application by the Romanizers of the standards

of the *Institutes* made short work of the distinctions between the various forms of dependent status. "In servorum conditione nulla differentia est," said the *Institutes*. Fleta copies the words. Britton paraphrases them, and at once the rift is seen in the symmetrical uniformity of the theory, when applied to English custom. "Ne nul ne poet estre plus vileyn de autre, car touz sount de vile condicion — qi qe unques est *serf*, il est ausi pur *serf* cum nul autre."<sup>1</sup> The very fact that Britton should have thought it necessary to amplify the simple proposition of Justinian imports suspicion as to the extent to which his theory was reconcilable with what he saw around him. He uses three designations, "villains," "serfs" and "pure serfs," where the Latin text has but one. "Villain is serf and serf is villain," he says in effect. But there are those, his expressions suggest, who distinguish between them. One of them, as we know from Mr. Nichols's learned edition, was an anonymous contemporary commentator upon his own text, "who subsequently filled judicial offices." This writer draws three distinctions in that class which Britton, on Justinian's authority, has pronounced indistinguishable. A *naif*, or native, he tells us, is a hereditary serf. A villain is he that comes afresh into servitude, from which he cannot depart, "though he be of a free stock." Evidently the writer is seeking a compromise between theory and practice. There are, he sees, incidents attached to villainage in English law inconsistent with the doctrine that villainage is serfdom. These must be connected, he surmises, with a strain of free blood which has carried with it some relief from the disabilities in the Roman code attendant upon servitude.

Let us now turn to the English school of jurists, as represented in *Le Myrrour*. "Villains," the author insists, "are not serfs," and from the fact that he heads his chapter on serfs with the words "*De Naifter*," we know that he considers *naifs*, givitives, and serfs to be identical.

he serfs [he tells us] can purchase nothing but for the use of the lord. by do not know in the evening what service they shall do in the

*Mj*

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<sup>1</sup> Britton I, xxxii, 3.

morning. Their lords may put them in irons, in the stocks, may imprison and chastise them at will, saving life and limb. They may not fly from, nor forsake their service, so long as they find that on which to live, nor is it lawful for any to receive them without their lords' will. If these serfs hold fiefs of their lords, it is to be understood that they hold them from day to day at the will of their lords, and by no certainty of services.

This uncertainty of service was the mark of serfs, or of what Bracton, forgetting his doctrine and falling back upon fact, calls "pure villains" (f. 208, b). It logically follows that in such a case performance of service cannot be pleaded in bar to an action, since service which is without limit can never be performed. Nor, conversely, need default be alleged to justify eviction.

Villains [*Le Myrrour* proceeds to say] are cultivators of fief dwelling in villages upland; and of villains is mention made in the Charter of the Franchises, where it is said that a villain may not be so grievously amerced as that his tillage (*sa gaigneur*) should not be preserved to him; for of serfs it makes no mention, for that they have nothing of their own to lose. And of villains their holdings are called villainages.

And the author concludes by appealing to the days of King Edward, the Golden Age to the English of the thirteenth century. With the great men of those days he compares, and comparing condemns, the lords of his own day — practisers, no doubt, of the doctrines of the Romanizing school — who by wrongful distresses and evictions had sought to reduce their villains to serfdom, a wrong for which, as he recalls, there was remedy by the writ *Ne injuste vexes*.

In the light of these very positive statements let us revert to the exposition of Mr. Vinogradoff. In the earlier part of his work, as has been said, he reduces the dependent classes to a dead level of serfdom. Possessed by this doctrine, he misreads the evidence incidentally disclosed even by the jurists whose servile Romanisms he follows. "A villain," he tells us, (page 61), "is born in a nest, which makes him a bondman." In the note he gives two references, one to a case of 1303, the

other to Bracton. Yet both these examples show that the term which Mr. Vinogradoff applies to a "villain," *sans phrase*, is used of a *nativus*, or *naif*. That these were very different classes appears from another case selected by himself (page 46, note 1). In 1274 two tenants summon their landlord before the king's court. They do not pretend to be freeholders; but they allege that they hold their land "by fixed customs and services." In other words, they claim to hold by villain tenure. The answer is significant. The defendant demurs on the ground that the plaintiffs possess no cause of action, save for life or limbs or bodily injury, they being his hereditary serfs (*nativi*). In the light thrown by *Le Myrroure* we can understand why the court refused to interfere. The allegation of fixed, or in the language of the pleadings, "certain" services, was intended to raise the presumption, though not the conclusive presumption, that the plaintiffs were villains. It may be taken that the allegation was false. Otherwise, as Bracton lays down (24 b), and as Mr. Vinogradoff himself elsewhere (pages 70, 73, 74) notes, an action would have lain on the covenant, even though the plaintiffs had been serfs. No doubt the "bond-conventioners" of Cornwall occupied the position of serfs under fixed customs, and were not villains, but what their name showed them to be. The existence of such classes leads Mr. Vinogradoff into difficulties when, with his preconception of the identity of villains and serfs, he approaches the question of tenure. The serf, as has been seen, was normally at the mercy of uncertain customs. From that Mr. Vinogradoff somewhat rashly derives the proposition that certain customs mark a free man. "Whatever the customs may be, if they are certain, not only the person holding by them, but the plot he is using are free" (page 78). Let us test this again by one of Mr. Vinogradoff's cases (page 80). It is taken from Bracton's *Note Book* (pl. 1103). The case is an assise of novel disseisin, tried in 1224-25. "The defendant" (I am quoting Mr. Vinogradoff) "excepts against the plaintiff as his villain; the court finds, on the strength of a verdict, that he is a villain, and still they decide that William

whom he raises the "exception of villainage" was something more than a villain. Had the Romanist doctrine, which sunk all distinctions, been true to fact, there would have been no meaning in two-thirds of the proof which Britton admits was exacted. The *astrum*, literally, the hearth, "must be taken for the lord's dwelling-house, or such-like," as Selden explains. It is the strongest word that could be employed to convey the idea of that close personal attachment to the lord implied in domanial serfdom. It lends significance to the fact, mentioned by all writers, that the proceeding was formerly directed against a native. If the claimant, says Bracton, be a serf—observe, not a villain—he can be excepted to; and Bracton identifies serfdom with the condition of a native. Britton tells us that when, upon an exception, the plaintiff is "attainted for the villain of the tenant, the tenant may well take him and put him in the stocks, or drive him off the land, as he should his villain." Now we know from *Le Myrrour* upon what class such rigors might be inflicted. Not upon villains, it tells us expressly, but upon serfs.

To recur to the case of 1224-25, the decision of which is impugned by Mr. Vinogradoff. If, in the practice of English law, villain, native and serf were all one and the same class, undoubtedly Mr. Vinogradoff is right, and when the fact of villainage of status was established, as it was upon the trial in question, nothing remained but for the lord to exact the penalties. But the villain customs, as set out by the defendant, who was perhaps a disciple of the Romanizing doctrinaires, were fixed, or "certain." Now we know from *Le Myrrour* that the *differentia* of a villain from a serf was that the serf had no certainty of service. And the judgment was evidently founded upon a recognition of this distinction. The defendant, on the other hand, was anxious to prove serfdom. He elicited the fact that the plaintiff's brother had been sold by him. This, of course, was not conclusive, as the sale might have been in satisfaction of debt (*obnoxatio*) and the jury expressly found that there was no other evidence of serfdom, such as *merchet*, etc. The plaintiff was adjudged

a villain holding in villainage, and, instead of having to become the defenceless property of the court confirmed his title to the land in dispute, the condition of rendering the services ascertained to

The two-fold decision of the court in this case — as to the status and a decision as to the tenure — in understanding what really constituted a villain, distinguished from a native, or serf. The compilation to Ranulf Flambard, at the close of the eleventh century, called *The Laws of William the Conqueror*, carefully distinguishes *coloni* from *nativi*. The former, as Bishopp has remarked, correspond to “the ceorls of the period.” It is expressly laid down by the code that “lawful to the lords to remove the cultivators from as long as they can do rightful service.” On the other hand, natives are regarded as disposed to leave their occupation in order to avoid the services associated with them. Then, while the interest of the *colonus*, or “villain,” appears in the French text, was to remain on his holding, of the native was conceived to be to escape from his. This is the difference of status which underlies the distinction of villain tenure. Despite the attempts at identification, the difference continued to receive recognition from the courts.

If we pass from status to tenure, again an undoubted distinction presents itself. Of the criterion of certain particular services we have already spoken. To understand the foundation of the distinctions of tenure we must go back to the constitution of the manor itself. It was held that land in demesne, wastes and land in villainage, or villeinage, were all land. We are all familiar with the doctrine, popularized by late Mr. Joshua Williams’s admirable text-book *Principles of the Law of Real Property*, that no man is owner of land in England save the sovereign. It is a theory, since it frees the appropriation of land for public purposes from the taint of confiscation of private property. Expressed in the language of the feudal period, “the king got, by right of conquest, all the land of the realm;

own hands, in demesne." The expression, it needs hardly be said, was suggested by the organization of private manors. The demesne was divided into "bordland," the land which immediately supplied the wants of the manor house, and land held "at will." In Domesday the bordland is called "inland," as opposed to "upland," or land *in servitio*, i. e., held by services. In that portion of land which was retained in demesne, the tenure of the cultivator was as precarious as in the description of *Le Myrrour*. He was working for the lord's profit, originally to supply him with food. The land he tilled was from that point of view called *terra nativa*, and he himself a man "of native blood." This is the class described by Britton as "pure villains of blood and tenure, who can be ousted from their tenements and their goods at the will of the lord."

In process of time a variety of circumstances combined to improve the condition of these tenants. To absentee landlords it became a convenience to receive their dues in money, a change at first, as Mr. Vinogradoff's pages show, sometimes regarded as a hardship upon the peasantry. A fixed payment would of course be essential; and in this way, almost imperceptibly, land passed out of demesne into customary land. A more formal method was to summon a manorial jury, marking the conversion of demesne into customary land by a solemn assize, whence the designation "*terra assisa*." In the history of the manor of Castle Combe we find a wholesale conversion of demesne into customary land, the apportionments corresponding to the area of the existing holdings in villainage. But here and there, as Fitzherbert observes, the old system survived, and bondmen held with no more certainty of tenure than in the days of Bracton and of *Le Myrrour*.

Although, as we hear from Littleton, even free men were occasionally found ready to undertake land upon the tenure and services of serfs, such a symptom of land hunger was doubtless regarded by most people, as it was by him, as "an act of insanity." But there is no question that when, in the fourteenth century, labor became scarce, lords were glad enough to grant out their demesne in villainage to freemen, or,

as frequently happened, to lease it for terms of years. With the land the lessee took the natives, or bondmen, upon it. It was to his interest to retain them in this condition, he acting as himself the supervisor of their gratuitous labor. It was upon such estates, it may be suspected, that the class lingered longest when it had disappeared in most parts of the country.

It must not be left out of sight that, as laid down by all the jurists, tenure did not directly affect status, though this principle was so far departed from that certain legal inferences "in favor of freedom" were drawn by the courts from tenure to status. When men "of native blood" became customary holders the taint of their status still clung to them. It was to the lord's interest that this should be the case. According to the lawyers, villains by blood, or natives, were subject to tallage without limits (*de alto et basso*) at the will of the lord. But the limitations upon the exercise of this right, though originally imposed by no external authority, were early prescribed by economic convenience, and to tallage villains "to destruction" was legally condemned as "waste." Customary compositions, therefore, generally established themselves, and the persons upon whom they were obligatory, whether with respect to status or to convention, were duly inscribed upon the manorial rolls.

The difficulties attendant upon Mr. Vinogradoff's disposition to slur over the distinctions between the various dependent classes recur in connexion with ancient demesne. The doctrine of ancient demesne is one of the most interesting and important in the history of villinage. Ancient demesne was land which had been *terra regis* in the reign of the Confessor. This clearly points to a time when the kings of England were not conceived, as the Elizabethan lawyers asserted of the Conqueror, to have "all the lands of England in demeane." With respect to this land the persistent confidence of the English people in the equity of the royal saint asserted itself. "The laws of Edward the Confessor" were to be maintained on his lands, into whose hands soever they passed. The "men



of ancient demesne" were personally free and their services were fixed. But besides these privileges of tenure which, as the cases in the law books show, were largely shared by customary tenants, they enjoyed certain political and commercial advantages.

Tenants are not bound to attend the county court or the hundred moot; they are not assessed with the rest for danegeld or common amercements, or the murder-fine; they are exempt from the jurisdiction of the sheriff, and do not serve on juries and assizes before the king's justices; they are free from toll in all markets and custom houses.

These exemptions were of considerable value and created a favored class distinguished by the title of villain sokemen. It was, however, rather out of tender care for the interests of the crown than for the welfare of its tenants that these concessions were upheld by law when the land had passed into private hands. As Mr. Vinogradoff shows (page 107, note 4) by an apt quotation from Britton, the demesnes of the crown were in theory inalienable. He quotes also, in illustration of this, from the Stoneleigh Abbey register an order by Edward I for an inquisition into the state of that property. The king explicitly contemplates the possibility of a resumption at some indefinite time, and the order alleges the need for protecting the crown against the changes which should impair the value of its reversionary interest.

To what class upon other estates did these privileged tenants correspond? Mr. Vinogradoff has no difficulty (page 112) in rebutting Mr. Elton's assertion that "it is only the freeholders who are tenants in ancient demesne." He states with perfect accuracy, citing Bracton, that on ancient demesne there are, besides villain sokemen and free tenants, pure villains too. He quotes the Stoneleigh register, which speaks of natives, or serfs, on ancient demesne, as distinguished from the regular customary tenants. These natives, or serfs, are in other registers called villains—a fact, I may add, which testifies to the confusion of names which came in with the thirteenth century, since the Laws of William the Conqueror translate "sokeman"

where. But his tendency, as has been seen, is upon other manors to follow the lawyers' attempt to identify the serfs with villains. Upon ancient demesne it is quite impossible for him to confound them with sokemen, whose difference of name protects them from such a mistake. But he has nothing to say of their presence there, and when a case meets him which turns upon their status, he dismisses it with the contemptuous epithet "astonishing," exactly as he condemns the decision of 1225.

The example referred to is given in full by Mr. Vinogradoff in Appendix VII (page 431), but may be best summarized in his own words :

In 1294 some Norfolk men tried to get justice against Roger Bigod (Bygod in the original manuscript), the celebrated defender of English liberties. They say that they have been pleading against him for twenty years, and give very definite references. The jury summoned declares in their favor. The earl opposes them by the astonishing answer that they are not his tenants at all. It all ends by the collapse of the plaintiffs for no apparent reason ; they do not come into court ultimately, and the jurors plead guilty of having given a false verdict. [Page 101, note 5.]

So much for the facts as stated by Mr. Vinogradoff. Now for the original, as printed in his appendix. According to the plaintiffs — and the allegation does not appear to have been traversed — the manor in question, of which they claimed to be tenants, was ancient demesne. As tenants of ancient demesne, they claimed to hold by fixed services. They complained that Roger Bygod and his predecessor in title (who was his uncle) had exacted from them services villain and uncertain. Now mark the answer of Roger Bygod. The plaintiffs, he avers,

set out in the writ that they are the men (*homines*) of the same Roger of the manor aforesaid and tenants of the same manor, the which William and others [the plaintiffs] are not the men of the same Roger of the manor aforesaid . . . and further, they do not hold any tenements in the manor aforesaid, nor did they hold on the day aforesaid [the date of the writ], nor for a long time before that date, wherefore he demands judgment. . . .

The plaintiffs were six in number. Two of them in reply traverse the earl's denial and set out their holdings. One claims that at the dates of the issue of the writ and the statement of claim he held one messuage, onecroft and half an acre of marsh land ; a second, that he held one messuage and eight acres of marsh land. Both of these repeat that they are the *homines* of the earl. The other four plaintiffs traverse the earl's denials otherwise. They say that they sued out a writ against him twenty years before, being at that time the *homines* of the said earl and tenants of the manor aforesaid, and that they have prosecuted the action uninterruptedly ever since, reviving the writ whenever it abated. This plea probably refers to the employment of Bygod in military service, whether in Edward I's expedition to Palestine, or in Wales, where he is known to have been engaged in 1282. The service of the king, we learn from Bracton, was a cause of abatement of proceedings. The plaintiffs add that the earl's eviction of them during the pendency of the litigation ought not to found a plea against their claims as tenants. To this the earl took the technical objection that they had not revived the writ, and this was the first issue to be tried. That he had evicted them, may therefore be taken as true. Upon the day appointed to try the issue as to the writ these four plaintiffs failed to appear, and they and their pledges were "at mercy." From this it may be inferred that in their case the objection was good. In the case of the other two tenants a jury was empaneled, which returned a verdict that on the day and year aforesaid they were not the men of the earl nor tenants of the manor.

What did these two plaintiffs mean by alleging that they were *homines* of the earl and tenants of the manor? They meant that they were villain sokemen, entitled therefore, as they said, to fixed services and fixity of tenure. The evidence of their villainage was twofold. First, their holdings. As to these, it must be admitted that they were so small as to raise a presumption that the earl was right. Certainly they were not tenants of the normal holding of the *villani* of Domesday,

the virgate of thirty acres. Most suspicious of all, they do not appear to have held land in the open fields, but marsh land, that is, in all probability, land of the wastes of the manor, which since the statute of Merton in 1236 was commonly accounted part of the lord's demesne. The area of the holdings is not, however, absolutely conclusive of the case. Hence the necessity felt on both sides for the other plea, that the plaintiffs were or were not the *homines* of the lord. The claim implied a special personal relation. We know what that relation was. Villains took an oath of fealty to the lord. "*Fidelitatem fecerunt atque hominium*," as the mediaeval phrase ran, though this last word perhaps refers more especially to homage, the mark of free tenants. The oath of the villain is given in the original Norman French in the Statutes of the Realm among acts of uncertain date, though, as Madox has observed, it is rather in the nature of a precedent. Now had the plaintiffs been able to establish their assertion that they were the men of the earl by fealty, a reciprocal obligation would at once have attached to the earl. Although, as ancient jurists have explained, the lord did not take an oath of fidelity to his vassal, he was, nevertheless, in effect equally bound. "That it was binding on both sides appears from the most authentick explanations of this engagement," says Wright in his learned work on *Tenures*. It is now possible to understand the plea which Mr. Vinogradoff considers "astonishing," that the plaintiffs are not the men of the defendant earl. The still more "astonishing" verdict of the jury, that "they were not the men of the aforesaid earl nor tenants of the aforesaid manor," seems a perfectly legitimate conclusion.

If that be so, who were the plaintiffs in the eye of the law? For they appear to have been *de facto* dwellers upon the estate. According to Mr. Vinogradoff's theory, they were victims of legal oppression, and the jury acted in collusion with the earl. It must, however, be remembered, that they were, in Mr. Vinogradoff's view, villain sokemen or tenants of ancient demesne. Now we know—indeed Mr. Vinogradoff has treated the point with much detail and precision (pages

113-116)—that tenants of ancient demesne were carefully protected by the king's courts. We also know that the king in 1225 was none other than Edward I, himself only a few years later the invader of baronial rights as represented by this same Earl Roger in a historic passage of arms. This was not a sovereign likely to tolerate aggressions upon a prerogative so valued as that which, on the plea of ancient demesne, enabled the crown to intervene in the administration of the estates of great feudatories. On general grounds, therefore, Mr. Vinogradoff's position is encompassed by improbabilities.

The explanation of the case and the justification, from a feudal point of view, of the verdict and judgment are to be found in a passage of Britton already quoted, describing the complete disabilities of "pure villains" in ancient demesne. They had no customary rights, but were literally tenants at will, or in the phrase of later lawyers, "tenants at will at common law." We know from Littleton that such were distinguished from customary tenants, also technically "at will," in that they did no fealty. It must be borne in mind that in Domesday, and even in the Hundred Rolls, tenants are classed by status as *liberi, villani, cotarii, etc.* The term "tenant at will," as a classification, belongs to a later period when, as Sir Henry Maine would put it, status was replaced by contract. Spelman tells us that "tenant" conveys to the English what "vassall" does to foreigners. "Vassall," we know from Du Cange, is a term properly used of the magnates admitted to the intimacy of sovereign rulers. And thus, though the plaintiffs against Earl Roger may be said to have held land at will, as Fleta describes servile tenure, the earl was probably justified in denying that they were "tenants" at all, or "men" by virtue of fealty.

I do not, as has been seen, regard Mr. Vinogradoff as uniformly successful in his treatment of the statements of English lawyers or of the points raised by English law, so far as the classes comprised under the name "villain" are concerned. But I have nothing but commendation for that part of his work which analyzes the manor and the village

community. In this he reproduces the results of his *Inquiries into the Social History of Mediæval England*, a work which has for five years past been in the hands of Russian scholars. Upon the origin of the system of intermixed strips he is at issue with Mr. Seebohm. While by Mr. Seebohm its explanation is sought in co-aration and in the allotment to coöperative households of shares correspondent to their contribution of oxen for ploughing, Mr. Vinogradoff adduces evidence to show that the system had "its roots in the wish to equalize the holdings as to the quantity and quality of the land assigned to them, in spite of all differences in the shape, the position and the value of the soil." In Russia and elsewhere, where at the present day such communities exist, nothing resembling co-aration is to be found. In England too, as Mr. Vinogradoff shows from mediæval documents, the "peasantry appear to have been commonly provided with small ploughs drawn by four beasts." And even if this were not so, Mr. Seebohm's theory has to meet the difficulty that "if the strips followed each other as parts of the plough team, the great owners would have been possessed of compact plots" (page 254).

An equally vexed question is the position and origin of the free tenants in a manor. According to Mr. Seebohm, the two divisions of manorial land were exhaustive — land in villainage and the land of the lord, or demesne. But Mr. Vinogradoff insists upon the number of free tenants everywhere to be found, quite apart from any suspicion that they represent grants by the lord. They were not bound by the uniformity of the villain holdings, but despite the irregularities in the areas of their possessions, they point to "a system similar to that which prevailed on villain soil" (page 328). "The traits which mark these are 'shareholding' and light rents. The light rents do not look like the results of commutation; the 'shareholding' points to some other cause than favors bestowed by the lord."

Writers who are the victims of legal theories, failing to reflect that if the theories sometimes express, they also sometimes conceal facts, are satisfied to conclude against the original

The village appears again in its corporate capacity when it hires land to farm, a proceeding of which we have records as late as the sixteenth century. Last of all,

we have indications of separate village meetings under the manorial court. . . . In several instances the entries printed in the second volume of the Selden Society's publications point to the action of the townships as distinct from the manorial court and placed under it. In Broughton a man distrained for default puts himself on the verdict of the whole court *and of the township* of Hurst, both villains and freemen, that he owes no suit to the court of Broughton, save twice a year and to afforce the court.

I cannot help reflecting that if Mr. Vinogradoff had begun his work with this analysis of the manorial system and of its relation to the township, he would have reposed less confidence in the statements of the Romanizing school of lawyers. In the chapter in which he summarizes his conclusions he comments upon the difficulties which these points of manorial organization throw in the way of "the partisans of the servile community." The manorial court's

body of suitors may have consisted to a great extent of serfs, but surely it must have contained a powerful free admixture also, because out of serfdom could hardly have arisen all the privileges and rights which make it a constitutional establishment by the side of the lord.

In a word, the manorial order has been superimposed upon the more ancient communal organization of the peasantry.

Enough has been said to show that there is warrant for a reconsideration of this question as left by Mr. Seebohm. The next trend of scholarly research will be towards the manorial system as it existed before the Conquest. America is to be congratulated on having produced in Mr. Andrews a skilful pioneer in this work. If any reliance may be placed upon tradition, we may expect to find in the records of these centuries, when submitted to the exacter scrutiny of inquirers of the new school, materials out of which we may remodel our conceptions as to the primitive social organizations of the English-speaking race.

I. S. LEADAM.

## I.

As to parties, these certainly exist, in name ; but the names serve only to designate bodies of men united by certain strictly personal interests or by a certain community of temperament. It is impossible to find any real difference between these nominal parties as regards their attitude towards the political and social problems with which the country is confronted. To this rule the extremists, indeed, constitute an **exception ; but they are not at all numerous.** Strictly speaking, there are three extreme parties, of which, however, one only is really active, namely, the Socialists. The Republican Party maintains a proud reserve, and as to the Clerical Party, it effaces itself entirely on the political stage.

In Italy there are two kinds of socialism, of which one, agricultural socialism, is indigenous, while the other, industrial socialism, is only the reflection of French and, even more, of German ideas. This latter has its chief strength in Milan, which is industrially the most important city in Italy ; but it has some adherents in all the other centres of industry, such as Turin, Spezia and Genoa. The head of this party is the lawyer Turati, a resident of Milan, who publishes there two socialistic papers—a review entitled *Critica Sociale* (*Social Criticism*), and a small weekly paper called *Lotta di Classe* (*Struggle of the Classes*). This last name is sufficient to show that this party takes, in general, the point of view of Karl Marx. Turati is a man of much talent. He is well informed and active, and probably will yet play an important rôle in Italy. He has been lucky enough to make one important convert—Sig. de Amicis, the well-known novelist, who lives in Turin. The socialism of de Amicis, to tell the truth, does not go further than a vague desire for the amelioration of the lot of the people by collectivistic laws. He does not appear to have a very clear idea of the measures to be desired or of the effect which they would produce. But the simple fact that de Amicis has become a follower of the Socialists has increased their reputation and probably contributed, at the last



election, to the success of the Socialist candidate, Sig. Merlani. This election is very significant, as Merlani was opposed by General Pelloux, and Turin is a stronghold of the military party. In Milan the Socialist Party presented a very clear **program** — the contest of the masses against the bourgeoisie. **Their candidates** only registered a small number of votes. Turati had 352 out of 2,569 votes, while his chief opponent had 1,458. Another of **their candidates**, Sig. Gnocchi Viani, a clever man, obtained 620 out of 3,095 votes.

Agricultural socialism is spreading in the provinces of Mantua and Parma, and in some southern provinces, where it takes the form of a simple desire for the partition of the land. In former times its centre was in Romagna, but it now seems to have lost ground there. It was in Romagna that Cipriani, who was unjustly condemned and imprisoned by the Italian courts, was returned as a Socialist deputy. Under Crispi's ministry, it was thought well that the king should make a tour in Romagna, and, to mark the happy event, he was induced to pardon Cipriani. The king was well received by the people of Romagna; and since then he has loaded popular societies with his favors, for which reason socialism is losing ground little by little. But in the southern provinces there is a real agrarian question. To understand it thoroughly we must retrace the course of their history a little.

The revolution in Italy was chiefly the work of the bourgeois, who naturally sought to turn the new state of affairs to their own advantage wherever it was possible to do so. The north and centre of Italy were like other civilized countries in that the distinction of classes was not very definite; and here it was not possible for one party of the bourgeoisie to enrich itself directly at the expense either of the other party or of the people. It was necessary to have recourse to the means which politicians employ in all countries, and which are based upon the intervention of the state. But in the southern provinces the bourgeois, without renouncing these means, adopted others more direct, which caused their yoke to weigh very heavily

upon the lower classes. They took possession of the communal administration and drew from it a profit visible to the eyes of all. In the ancient kingdom of Naples many large fortunes were formerly made by the misappropriation of the property of the communes. The liberal régime has changed the form but not the substance of these usurpations. In certain places the property of the commune is leased to figure-heads, or to the friends of the communal councilors, at ridiculous rents ; in others it is sold outright, and for next to nothing, to men of straw, all serious bidders being kept away from the auctions. The government does nothing to suppress these abuses, because the same persons who dominate the communal councils are the chief electors of the deputies, who, in their turn, employ their influence with the government to screen the misdeeds of their friends and partisans.

The oppression of the people in the villages has led to frequent uprisings. Racioppi, in the tenth chapter of his *Storia dei Moti della Basilicata nel 1860*, writes :

The public land (*ager publicus*) has been occupied unjustly by the new bourgeois patricians. And this is how it happens that a man tries to gain justice with his own hands, while they whose duty it is to administer justice are deaf to his complaints and unmoved by his prayers. . . . Not finding the municipal representative, elected by the bourgeoisie, either very disinterested or very much concerned about social problems, the people endeavor to cut the Gordian knot by frequent insurrection.

These seditions have continued up to the present time, and we have had some very recent examples of them at Forenza and at Caltavuturo.<sup>1</sup>

<sup>1</sup> The outbreak at Forenza was attributed by the Minister of the Interior, in an address in the Chamber, February 22, 1892, to the establishment of a household or family tax (*tassa di fuocatico o di famiglia*), which is levied or not in a district according to the pleasure of the authorities of the commune. The deputy Giantureo, in replying, said : "The commune with which we have to deal was one of the richest in the Basilicata. A few years ago the council of the commune was dissolved, the royal commission having found that the serious charges of corrupt administration which had been brought against it were only too well grounded ; but, notwithstanding this, the same members were re-elected."

Caltavuturo is a small commune in Sicily. The disturbance here, in which

The same oppression was one of the causes of brigandage.<sup>1</sup> Brigands have disappeared,<sup>2</sup> but the oppression under which the people suffer has not much diminished. Here is what Sig. Leopoldo Franchetti wrote in 1875 of the bourgeois class which rules the Neapolitan communes :

Such persons being entrusted with the administration of the public patrimony, it was to be expected that many among them would consider it merely a means to the increase of their private fortunes ; and in fact so prevalent is this idea that no attempt is made to conceal it, and when any one's financial affairs are in a bad condition it is not infrequent to hear it openly proposed that he should be elected to some office "to recoup himself." . . . The people in whose hands our laws apparently intend to place the local government are generally divided into two classes : those that have followed the lucrative career of local employees, and those who, while too honest to take part in these abuses, nevertheless do not prevent their occurrence. . . . In this way councils and local boards, and the boards of administration of charitable institutions and "pious works" are often full of ruined people who make an income out of the public patrimony. . . . The corruption of the chiefs naturally communicates itself to their subordinates. The surveillance of the communal funds gives the guardians and other inferior employees the opportunity of making a quantity of little perquisites of a lucrative kind, all of which are a loss to the fund. Every usurper of communal property corrupts as much as his opportunities allow him — that is, up to a certain grade in the social scale, when power takes the place of money. . . . The crown prosecutor of Avezzano, in his speech of January 8, 1872, on the administration of justice (page 29), laments the rapid felling of the trees in the district, and says that the forest guards connive at depredations ; that they are so many Arguses in tracing the fagots which the poor man takes for himself, but are

many lives were lost, arose out of an attempt by the peasants to assert possession of land which they claimed was communal property and had been usurped by private individuals. Signor Colajanni declared in the Chamber, January 30, 1893, that the peasants were right and that the legal proceedings showed that more than 100 hectares had been usurped.

<sup>1</sup> Cf. the work of Rossi on *The Basilicata*, page 571, where the career of Coppa, a most ferocious brigand, is thus explained.

<sup>2</sup> The disappearance of brigandage is due mainly to the excellent roads which now traverse the country.

blind and dumb to the devastations that the rich make in the woods.<sup>1</sup>

In the rest of Italy many analogous facts occur; but the politician's art in stripping his fellow-citizens is there more refined, whereas in the Neapolitan communal administration it is brutally oppressive, and is the cause of an intense hatred for the bourgeoisie on the part of the poor people. Their resentment has been ferociously manifested as often as the restraints of public force have been relaxed, and under similar circumstances we are likely to witness similar outbreaks.

The Republican Party is composed of the remains of Mazzini's party. It is not large, but it consists almost exclusively of men whose honesty and straightforwardness are above suspicion. As a rule, it refuses to take part in the political elections, allowing its adherents, at most, to assist in communal elections only. The *Fratellanza Artigiana* of Florence, which preserves the purest Mazzinian traditions, is in favor of absolute abstention from voting. At the last elections (1892) it declared :

It is a sacred duty of the democratic party to abstain from voting, abandoning forever a war which serves only to harden the hearts and intellects of young men, by upholding a system against which the only thing that could succeed would be an open and loyal war made by the people in the name of the people, claiming their rights. Remember, electors, what Giuseppe Mazzini said ! Whoever tries to perpetuate an institution which has had a death-blow is trying to do impossibilities. Galvanic action may simulate life for a brief moment, but cannot give it reality.

<sup>1</sup> Franchetti, *The Economical and Administrative Conditions of the Neapolitan Provinces*, pp. 28, 29. The author is a member of the majority, who almost always votes with the government, and is inclined to exaggerate the prosperity rather than the evil condition of the country. In political and social questions, as in courts of law, the testimony most worthy of confidence is that of persons who acknowledge facts contrary to their general mode of thinking, or who acknowledge their friends to be in the wrong. It is on testimony of this nature that I have tried as much as possible to rely, rejecting the testimony of persons who are speaking in favor of their friends and against their adversaries.

At Milan, however, a circumstance occurred which was favorable to the Republicans to the ballot-box. Their candidate, Andreis, was not elected, but he obtained 1967 votes, cast for his opponent, who was supported by the Government. These 1121 votes, however, were not for the Republicans; many others voted for Sig. Andreis in protest against governmental corruption and the facts tend to show how utterly null is the influence of the Republican Party in Italian political life.

The influence of the Clerical Party is said to be great. It is said that the pope, when asked why he is so faithful to vote, answered: "When one of our candidates goes into Parliament we lose him." Whether this is true or not, they are full of truth. Not only the Clerical Party, but those who have employment — and nearly all have — become lukewarm. Persons well acquainted with the families of the Roman aristocracy maintain that if they were asked secretly whether or no they would give Roman votes to the negatives would be more numerous than the positives, since these families would not risk losing the value of the property of value which the removal of the capital would mean to their houses. It is often said that when the pope does vote in Italy, a great change will take place in political life. This is an error. In Rome, at the communal elections, and yet they are not getting possession of the municipal offices. In 1870, when Torlonia, was removed from office, on a visit to the cardinal-vicar, they had even to protest. Nor do they protest now when they are proposed to hold an exhibition in Rome, and the anniversary of the taking of the city by the French. Owing to the fact that the Clerical electors are mostly small trades-people whom the exhibition would not interest, some municipal councilors belonging to the left, in favor of the exhibition, in spite of the delay in its opening — an evidence of lukewarmness — complained bitterly.

This last illustration brings us close to the limits where the confusion of Italian parties begins. In order to realize the degree of confusion that prevails, a comparison between English and American political leaders on the one hand, and Italian public men on the other, will be found serviceable.

In England and in the United States a certain connection is established between the names of public men and the ideas they represent; so that it is sufficient, for example, to learn that Mr. Gladstone has obtained a majority at the elections in order to know that he will propose to solve the Irish question; or to learn that the Democratic Party has triumphed in the United States under the leadership of Mr. Cleveland in order to infer that the country will not continue to increase its customs duties. With Italian politicians nothing of the sort is possible. For example, Sig. Minghetti fell from office because he proposed that the control of the railways should be given over to the state. His attitude on this question was not dictated by political exigencies; it was the result of a life-long inclination on his part towards state socialism. He considered it absolutely indispensable for the good of the country to take away the railways from the plutocracy who owned them; and to attain this end he did not hesitate to separate from his old companions who remained faithful to the liberal policy of Count Cavour, and thus to cause the dissolution of the old party of the Right. It would hence have been natural to suppose that this project would become the chief object of Sig. Minghetti's future efforts, as home rule has become that of Mr. Gladstone. Nothing of the sort. A very few years later, Sig. Minghetti was seen supporting a ministry, the chief point in whose program was the abandonment of the railways to private control. Further, Sig. Minghetti voted for a law which put the administration of the railways in the hands of a ring much worse than that which he had desired to destroy. Facts like these occur occasionally everywhere, but what is remarkable in Italy is that they are the general rule and that they seem quite natural. To realize this state

ancient oracles.<sup>1</sup> One candidate, who was chosen at the last elections, said that he would support any government which had the welfare of the nation sincerely at heart,—a declaration which certainly threw little light upon the speaker's personal convictions. Not all candidates carry the method so far; but in nearly all electoral programs phrases occur whose object is to avoid all precise treatment of the problems which are agitating the country. A candidate states, for example, that he "will vote for such military and naval expenditures as are necessary for the good of the country." This statement satisfies equally those people who believe that the good of the country requires an increase of these expenses, and those who believe that it is necessary, on the contrary, to curtail them. Another, following the program of Minister Giolitti, declares that he will not vote for new taxes unless they are absolutely necessary; which evidently commits him in no way, since new taxes are invariably declared necessary by those who propose them. A similar vagueness characterizes many recent utterances on the tariff question. By the customs law of 1887 Italy entered upon a policy of protection; yet the authors of the tariff and their friends have never frankly called themselves protectionists, as M. Meline and his adherents have done in France. They represent the new system as an inevitable expedient under the conditions of the times, and they speak much of the natural law of free exchange, which is to guide economic policy when circumstances make it possible. The lack of positive principle is illustrated by an incident during the discussion of the tariff law. Sig. Magliani, the Minister of Finance, at first declared himself opposed to a duty on foreign wheat (originally three francs on the 100 kilós, and now five francs);

<sup>1</sup> [American readers will find nothing peculiarly Italian in this phenomenon. Many of them will involuntarily recall the utterances of Lowell's "Candidate for the Presidency," in the *Biglow Papers*, e.g.:

"I stan' upon the Constitution,  
 Ez preudent statesmen say, who've planned  
 A way to get the most profusion  
 O' chances ez to *ware* they 'll stand."

—EDS.]

a scale which would enable Italy to take a leading position in foreign affairs. This satisfied everybody—the court, which insisted on the maintenance of the Triple Alliance and the expenditures which such a policy necessarily entailed, and the taxpayers, who protested against new taxes. Crispi allowed himself to be overreached by the Old Right and adopted the same program, at least in its chief features. The plan, however, was impracticable—a fact which its originators might have suspected but agreed to ignore. Here is a list of the expenditures of Italy during the financial year 1889–90, in millions of francs:

|  |              |
|--|--------------|
| Unavoidable expenses (interest on the permanent<br>and redeemable public debt, pensions, <i>etc.</i> ) | 700          |
| Military expenses . . . . .  | 422          |
| All other expenses . . . . .   | 515          |
| Total . . . . .  | <u>1,637</u> |

The last item of 515 millions was the only place where di Rudini's economies could be exercised. But even here there were expenses which it was impossible to reduce: expenses, for example, incidental to the collection of taxes; expenses for the maintenance of the police, *etc.* It could not be seriously hoped to introduce here economies sufficient to cover the large sums of which Italy stood in need. In di Rudini's program this difficulty was simply evaded. As premier, di Rudini was forced, in spite of his program, to contract new debts, and nevertheless he failed to reestablish the equilibrium of the budget. Impelled by necessity, he thought of lessening the military expenses. It was then that he encountered the resistance of the court. An intrigue, cleverly conducted by an employee of the royal household, brought Sig. Giolitti into power and permitted him to dissolve the Chamber and control the ensuing elections. Minister Giolitti is maintaining the equilibrium of the budget by loans. He is openly borrowing thirty million francs a year for the construction of railways. He is also borrowing indirectly, through an



his successor, di Rudini. There were only twenty-three members out of five hundred and eight who were constant in voting against Crispi's ministry and were afterwards constant in supporting that of di Rudini. This is a small number to constitute a real party. But what is more remarkable is to see how even the members of Crispi's cabinet voted when di Rudini had overturned the ministry to which they belonged. To translate their action into English values it must be imagined that the members of Lord Salisbury's cabinet, directly after having fallen from power, should vote, all but one, in favor of a Gladstonian ministry, and that their electors should think it perfectly natural for them to do this.

The political condition of Italy to-day is in some degree analogous to its social condition in the time of the *Compagnie di Ventura*. Then the cleverest or most fortunate leader drew round him the strongest bands; now the politician from whom the greatest advantages can be expected attracts the greatest number of deputies, who abandon him without scruple for any other leader who seems better able to serve their interests; and sometimes they abandon him from mere love of change. Matters have been at their worst, in this regard, since the ministry of Depretis. Cynical and corrupt, Depretis destroyed the last remaining vestiges of parties; and it was then that the name "Transformists" was coined to designate the politicians of the new era. Politically, the Italian Transformists correspond to the French Opportunists; and it is worthy of note that at nearly the same time when Opportunism appeared in France and Transformism in Italy, the old lines between Whigs and Tories began to disappear or to shift considerably in England. It would almost seem as if the same causes had been operative in the three countries — with different degrees of intensity, indeed, and with results varying by reason of differences in character and institutions.

Several leading Italian politicians have tried to modify this situation, but their efforts have completely miscarried. We must note, first of all, the attempts which have been made to promote the organization of parties through changes in the

It has also been proposed to give greater authority to the Senate by changing the manner of selecting Senators.<sup>1</sup> The Marquis Alfieri, who represents the liberal traditions of Count Cavour, is one of the most active promoters of this reform; but for the moment it is impossible to foresee whether the proposal will be adopted, or what result it would produce.

Of late years a certain number of eminent men have tried to draw up programs which might serve to rally and consolidate parties. Sig. Cavallotti, the recognized leader of the extreme Left, who undoubtedly represents the highest aims and clearest ideas of this group, drew up such a program under the name of *Patto di Roma* (1890). It was complete and practical, and might well have served to solidify the Radical Party; and, in fact, the candidates claiming to belong to this party went before the country in 1890 with this program. But after the elections they soon ignored it, and left their leader alone with a few faithful adherents.

In 1889 an excellent platform for a Liberal-Conservative Party was drawn up by Senator Jacini, since deceased. Jacini had been minister several times, and had a profound knowledge of the political life of the country. In 1891 he still thought the circumstances favorable for the establishment of such a party, but indicated that he had little hope of its formation. In a pamphlet entitled *The Conservative Strength of New Italy* (Florence, 1891), he wrote :

All the old parties have disappeared except the extreme Left (which up to the present time is not united), and no new parties have been formed. There are some groups, some partisans, some ministerials at any cost, no matter who may be in the government, but nothing more. This is certainly a condition of things favorable to the formation of a party such as we have spoken of. . . . But

<sup>1</sup> Senators are appointed by the king and for life. They must be over forty years of age, and are selected from among the ecclesiastical dignitaries and those who have held important political positions, appointive or elective. Eligible also are members of the Academy, five years after nomination, men of scientific eminence, and persons who for three years have paid three thousand francs a year in direct taxes. Besides these the princes of the royal family form a part of the Senate.

the character of the Conservatives is anything but energetic, and one must not ask of them what they have not the strength to give. Left to themselves, although the present circumstances favor them, they would not succeed in constituting a militant party. The difficulty is increased by the fact that no man capable of becoming their head is to be found in their ranks.

At the time of the last general elections Zanardelli, of the Old Left, made a speech in which he suggested a very logical basis for a division of parties. He thought that they should group themselves according to the greater or less extension which they were willing to give to the functions of government. But all such proposals have been treated as pure theory. Neither the politicians nor the electors have shown any interest in them. The politicians and their constituents have more direct, more practical and above all more personal ends in view. The electors ask the candidate what he will do for them ; and the deputy puts the same question to the ministry that solicits his support.

Sig. Bonghi, a leading man of letters, attributes his defeat at the last elections, not to his hostility to the Triple Alliance, as the semi-official papers explain it, but to the fact that he had not occupied himself enough with the petty private affairs of his constituents. A certain Piedmontese deputy is absolutely the factotum of his electors. There is no little service that he will not perform, even to looking after the commissions of his constituents' wives among Roman dressmakers and milliners. This member holds his seat in permanence ; nobody would dare dispute it. Other members get elected by paying liberally ; but their position is always less secure than that of the deputies who can procure for their electors the favor of the government and of the financial companies that depend on the government. As for the opinions of a representative, these are generally regarded by his constituents as immaterial, so long as they do not interfere with his keeping in the good graces of each and every ministry. When they do interfere with this supreme duty, they are felt to be detrimental.

## II.

There is perhaps no country, except England, where an important part of the economic interests of the citizens do not depend on the state ; but the proportion which this part bears to the whole differs in various countries ; and it is especially this proportion that we must keep in view when we wish to study the effects of the extension of governmental functions. In countries where protection prevails, the protected merchants, and those who aspire to be protected, evidently depend on the state. They can have only one aim—to take possession of the government, or to sell their support to the political party ready to pay for it by the utmost possible protection. Agricultural protection especially has the effect of depriving of their independence the class of great landed proprietors, who would otherwise be in a position to conduct themselves with entire freedom in political questions.

Some states, besides protecting through customs duties, pursue a policy of a financial protection which puts most of the enterprises of the country in their power, mainly through the medium of chartered banks, or state banks of issue. Accessory protection must also be considered ; such as steamship subsidies, the monopolies accorded to private individuals, the privileges of the *credit foncier*, etc. All these forms of governmental interference are found united in Italy ; and if they do not produce greater evils than those actually existing, it must be ascribed to a happy moderation in the Italian character which prevents the government from taking as much advantage of its power as it might or as much as other governments do. On studying this question more deeply, it is impossible not to be struck with the absolute economic dependence of the citizens on the state. In England, manufacturers, agriculturists and merchants hope to make their fortunes by their own labor and not through the favors of the state. France, even, which is one of the countries that in this respect resemble Italy, has several branches of national production which are satisfied with asking the state not to

injure them. The large wine producers, the dyers of Lyons, the manufacturers of *an* expect nothing from the state except that it keeps them from selling their products abroad through absurd customs duties. A portion of independent producers is far smaller, silk weavers and wine producers, but that producers either enjoy or seek state protection.

In Italy, as in France, the railway companies are dependent on the state. In Italy the railways belong to the state, which has leased them to private companies. These leases are marked by a great defect. The state takes twenty-seven and one-half per cent<sup>1</sup>—of the net earnings—taken by the state. Thus the railways are pursuing the method of all modern industries, to be largely and to be content with small profits. The state is not inclined to make reductions in the net earnings, reducing its percentage of the earnings, because it feels that these reductions would not always develop traffic, but that they would soon diminish its political influence, with a great resultant loss of government revenues. But what is more serious from the point of view is, that the railway companies do not profit from the working of the old lines. Their earnings come from the new lines which the state and the government have allowed them to construct. They are in strict dependence on the government, and are obliged to propitiate in order to be able to maintain their position in the future.

The Bank of France is closely connected with the government, but it is never seen using its influence to protect itself by the government. Of the corrections in Italy the same cannot be said. From the monthly balance sheet of the banks of issue

<sup>1</sup> This is the proportion paid by the chief lines. There are also called secondary, where the companies receive only half the net earnings, besides a fixed subsidy of 3,000 francs per kilometre.

government there may be read a note explaining the surplus circulation of the *Banca Nazionale*. The balance sheet of March 31st contains the following: "Assets, 64,793,125 francs: represented by 11,043,125 in notes of the Bank of Rome; 3,750,000 subsidy to the province of Cagliari; 50,000,000 extraordinary issue to the banks of Turin." Each of these items calls for some words of explanation. Why did the *Banca Nazionale* keep in its coffers the notes of the Bank of Rome, instead of paying them out as change? As has now been abundantly proved, the government knew from the report of the inspectors, presented in 1889 by Senator Alvisi, that the Bank of Rome had a secret circulation of twenty-five millions. It was to aid in preventing the discovery of this fact that the *Banca Nazionale* was required to retain the notes of the Bank of Rome. As for the subsidy to the province of Cagliari, that was given when the savings bank of this province, whose director was a member of the majority, became bankrupt. The director was tried and convicted by the court of assizes of Genoa. In the course of his trial he said: "I am convicted simply because fortune has not favored me. Many other banks do what mine has done, only success up to the present saves them." Recent revelations with regard to the Bank of Rome show that these words were prophetic. The subsidy to the banks of Turin was given chiefly to the Tiberina Bank to prevent it from failing. It was on this occasion that the government permitted the banks to refuse redemption of their notes, and this was the origin of the present financial crisis in Italy.

These are facts which cannot be denied. It may be objected that up to the present time proofs are wanting that the banks of issue provided the government with funds for election expenses. It is certain that the government spends for the elections much more than its secret service fund can place at its disposal, but this does not prove that the banks provide the rest. Other enterprises dependent on the government may also render assistance. Companies which receive, or hope to receive, subsidies, privileges, monopolies, make good use of their funds in sustaining a government which promises them favors. There

are reports that in the last elections the grateful persons who were made Senators was manifested funds to the government for election purposes. If proofs are wanting. It is probably from fear of much information on the means employed by the and its allies in obtaining money that the proposed inquiry into the Bank of Rome has been stifled.

Many enterprises are supported only by continuing of their bills, discounted by the banks of issue ; the discount is most freely granted to those who are in favor of the government. It should be noted that the tender quality of the bank notes is granted only for a short time, generally six months or a year. These banks in strict dependence on the government are a lucrative power. To secure their good will the banks are obliged to have what is called a political portfolio. This is given to bills discounted to legislators or influentialists, which are renewed indefinitely.

As to the sort of protection which I have called one example will suffice. On the 21st of last February Colajanni, speaking upon the subsidies to be granted to the General Navigation Company, said :

The honorable Sig. Bettolo has enumerated the dividend of the General Navigation Company amounts to 10 per cent, while other private companies paid twice as much. He said that the General Navigation Company spent more for coal, and also that their general expenses were greater. . . . While other companies pay twenty francs for their coal, the General Navigation pays thirty francs. Does the General Navigation spend so much in coal, or does it spend some millions less? It seems that the coal brokers of the company are most fortunate people.

Sig. Colajanni then proceeded to point out similar details of the repairs of the steamers belonging to the company.

These details illustrate the very wide diffusion of protection resulting from the protection granted by the state. Those who nominally enjoy the profit are obliged to share it

number of auxiliaries. An immense governmental patronage has been developed, like that which existed in the later period of the Roman Republic. Every enterprise enjoying governmental protection has a great number of hangers-on. These share the gains, and it is their duty to defend with all their might the privileges from which the gains are derived. As in ancient Rome, therefore, the political elections are largely controlled by those who are indirectly interested in government contracts.

If now we leave the economic field and consider the other fields of social activity, we still find the influence of the state preponderant. One domain alone is free from it—that of religion. The dissensions between the papacy and the monarchy have luckily put the clergy beyond the influence of the government. This is the real reason why the Italian politicians are so hostile to the papacy. Foreigners who attribute this hostility to anti-religious feeling make a great mistake. It cannot be denied that such a sentiment exists among some adversaries of the papacy, but the great majority of the politicians have no strong feeling either for or against religion. They simply feel regret at not having the influence of the clergy on their side to consolidate their authority. Many very honorable men have a similar feeling, which seems to them purely patriotic; they wish to see the papacy use its influence in behalf of the Italian fatherland;<sup>1</sup> but they do not generally distinguish the

<sup>1</sup> On this subject there has appeared a very singular pamphlet by G. Toscanelli, entitled: *Religion and Country attacked by the Pope. Should Italy Defend Herself?* (Florence, 1890.) Signor Toscanelli, a member of Parliament, was a good Catholic. He was deputed by Signor Depretis to negotiate an arrangement with the pope. Depretis, a great purchaser of consciences, wished to have those of the Catholic priests in his service. (Sig. Crispi also, according to what Toscanelli tells us, was in treaty for an arrangement with the pope.) The pope, however, was not to be persuaded. The spirit in which Sig. Toscanelli writes is indicated by the following passages: "The present contemporary politics of the pope ought to be taught, analyzed and censured in the upper schools" (p. 104). "In order to wrestle with the policy of the pope, the state has three methods. One consists in not granting him the temporal power. This means is not at all efficacious. . . . Another is that of refusing to recognize any pope who is not proposed by the government, and punishing him if he exercises any acts of jurisdiction" (p. 110).



are rare. The government generally has no need to punish an independence which is quite exceptional ; it only takes care to proportion its rewards to the zeal shown in serving it.

The influence of the government extends also to the courts of justice. In Italy, as in England and France, there are no absolutely independent courts, such as are found in the United States. But even where the courts are legally dependent upon the government (as in England, where they are the creatures of Parliament), complete judicial independence may in fact exist. In examining the condition of the Italian judiciary, we must rigidly reject all testimony which appears to be dictated by personal or party hostility. But unfavorable evidence proceeding from persons friendly to the existing régime, and above all, from the judges themselves, seems conclusive. An official journal has recently treated the question with unusual frankness. It begins by observing that for some time past public opinion has regarded the judiciary as less impartial than it ought to be, and it adds :

The fault is to some extent general. It is in the parliamentary system, the deputies, the government, the press ; in short, it lies with all those who have mined out of the rock of justice a vein of personal benefit. Once upon a time the judges were obliged to bow to one strong tyrant only ; now they are subjected to the will of thousands, and in their own interest they must submit to the influence of great and small. Look at the struggle among the judges, from the prætorships<sup>1</sup> of the small provinces up to the ordinary tribunals and the courts of appeal. Study the psychology of their most legitimate ambitions ; rebuild the history of their dreams, encouraged by the smiles of the syndics, protected by the prefects for the sake of their electoral influence, or lighted by the benevolent smiles of the legal deputies, from whose small golden medals at audiences shine promises of recommendation for promotion and change of place. Let us turn even to the highest step of the ladder and read the inmost thoughts of the magistrate who, either by tact or by open complaisance and obedience to the government, becomes a political leader instead of a chief dispenser of justice. They begin with compromise and finish by surrendering. The best,

<sup>1</sup> [The Italian *pretor* corresponds closely to the French *juge de paix*. — EDS.]

seeing that the most pliable are so often per-  
disgusted and leave the profession. Thus then  
the judiciary tends to decline.

In Italy the government cannot remove  
or degrade him, but it may assign him to  
equal or higher rank. The government re-  
promotion and punishes its enemies by trans-  
ferring them to courts situated in the principal towns to the  
most desirable places. In France the judiciary is  
secure, both as to grade and as to residence. It  
has been proposed to change the rule as to residence,  
and the government to transfer the judges.  
It is admitted by the Opportunist press that this  
is done with a view of increasing the influence of  
the judiciary. In Italy a minister of the  
government tried to take the judiciary out of politics  
by a decree against the government. He caused a  
decree to be issued, October 3, 1873, establishing rules  
for the transfer of judges to new residences. But in less than  
a year (October 3, 1878) another decree was issued at the instigation  
of the Left, abolishing these rules; and since then  
the government has been subject, in this matter, to the  
administration of the Attorney General La Francesca.  
The subject is :

The removal of a magistrate from one place  
to another destroys his ties of friendship;  
destroys his financial position; destroys his dignity;  
disturbs and troubles the security of his  
undermines his liberty. The practical result of  
these removals is why they are done. We have seen  
the influence of removals.<sup>1</sup>

These words are especially significant be-  
cause of the position held by the writer. Still more  
significant is the utterance of Sig. Eula, who holds one of the  
highest positions in the judiciary of the kingdom—that  
of the court of appeals at Turin. Sig. Eula says :

<sup>1</sup> Del Pubblico Ministero nell' Ordine Giustiziale.

Zanardelli that he commended him for not having asked the judges to render him, while on the road to the ministry, those services that his predecessors had required.

Sig. Minghetti, whose optimistic view of Italian politics has already been referred to, laid great stress on the growing dependence of the judiciary. He wrote :

It would be difficult to furnish proofs of the interference of the deputies in the nomination of judges, but it is one of those notorious things of which the public conscience is a witness. Some facts, however, we can cite, which show that this thing is not regarded as forbidden or irregular. A deputy, with real but unusual candor, defended himself against the troublesome attacks of a newspaper that accused him of begging the ministry to exile the judges of his province from the tribunal, by answering : "How could they make such an unaccountable charge ? To contradict it, it is enough to say that the tribunal is such as it is thanks to me. Many of the judges who compose it were especially suggested by me to the ministry."<sup>1</sup>

Sig. Minghetti also quotes an appeal sent to the ministry of justice, bearing the signatures of several deputies, asking him to select a protégé of theirs for the place of attorney general. He adds :

In the investigation of crimes and the search for their authors, judges have often paused and drawn back when they found before them powerful criminals and accomplices. The first to be corrupted by the local influence has been the government ; not for money, it is true, but for votes. . . . Hence, old and worthy men express the fear, and some venture the assertion, that under the Italian governments from 1815 to 1860 justice was better administered and the judges as a class were more respectable than is the case to-day. I do not agree with this opinion. However, if one wishes to be impartial he must acknowledge that, where there was no question of politics, the courts of that period generally sentenced with sufficient authority.

A politician on the other side of the House, Sig. Boccarini, who was one of the leaders of the Left, in a speech delivered May 16, 1886, alluded to "the discredit into which the courts

<sup>1</sup> Minghetti, *Political Parties and their Interference with Justice and Administration* (1881).

have fallen." On the 26th of May, Sig. Cav in which Sig. Baggiarini, Attorney General Appeals, tendered his resignation, and in his reason for resigning that he was not in government services which were against him.

The trial of Strigelli at Turin in 1884 was serious pressure was shown to have been government. Strigelli, who was accused of bank-notes, was under the protection of the prefect and this prefect, who was an excellent Depretis' ministry, obtained from the government anything that he wished. Sig. Noce, who was general of the court of appeals at Turin, gave that his substitute, Sig. Torti, had been in government because he had had the courage of the police. A letter written by the prefect to the court, the purpose of which was to prevent Strigelli from being pushed through.<sup>2</sup> Strigelli to penal servitude.

I might cite other cases, but these seem only add the evidence of a judge of high standing. Lozzi, President of the Court of Appeals

<sup>1</sup> Here is part of the letter: "I hoped to die in the bound by ties of love, habit and study. I was obliged expected to give what the dignity of my robe and the law forbade my giving."

<sup>2</sup> The letter of the prefect (Casalis), which was read in January, contained the following sentence: "It is useless how seriously I desire that Strigelli should not have been." Sig. Noce deposed: "The officials charged with the process should proceed, it not being possible to construct a case against Strigelli. Then I went to Rome and explained the situation to the seals. I said that the prefect, although he had no great a great interest in that man." This time Sig. Noce added he adds: "I returned a second time to Rome, and Sig. Noce to go ahead." We must bear in mind that the question that the prefect knew the judicial antecedents of the case was absolutely deplorable. Strigelli, taking advantage of the fact that he was afterwards an accomplice in the robbery of a goldsmith, had some innocent people condemned as guilty. When the police offered 2,500 francs to Lacarini if he would withhold

which was published at Bologna in 1883,<sup>1</sup> he observes that judges are not as independent as they ought to be, and alludes to the undue influence exercised by deputies who are members of the bar.<sup>2</sup> He speaks of

scandalous promotions, which are attributed by public opinion to political protectors; and removals which are said to have been obtained by legal deputies because they would have lost or feared to lose a case by the decision of a particular judge, so that it was needful to send him away at any cost. Let the first president, Senator Paoli, tell what happened among the persons employed in the court of appeals in Florence, without his knowledge, and one may almost say, in spite of him.

The men who govern the country have almost unlimited power to protect and enrich their friends and to ruin their enemies<sup>3</sup>—*parcere subjectis et debellare superbos*—but they do not often take full advantage of their authority. Apart from some exceptional cases (as when the Left came into power in 1876), the men who alternately hold and lose authority respect each others' friends and partisans. This is a consequence of that moderation which is a distinct feature in the Italian character. It is also a policy dictated by intelligent self-interest. The minister of to-day spares the partisans of his predecessor that his own partisans may afterwards be spared by

<sup>1</sup> Carlo Lozzi, the Magistracy before the new Parliament. Observations à propos.

<sup>2</sup> In the *Corriere di Napoli* of March 13, 1893, the following correspondence from Palermo appeared: "To-day a civil suit was to be argued before the court of appeals, in which Crispi was defending one of the parties . . . Some of Crispi's friends made a demonstration in his favor—a demonstration so energetic that the lawyer for the opposite side had to suspend his address because of the cry: 'Let Crispi speak.' The president of the court of justice had not the courage to clear the hall; he bowed to Crispi's power and the suit was brought to a conclusion *without further argument!*"

<sup>3</sup> When it is desirable to get rid of common people who displease the authorities, they are usually condemned for resistance to the officers of the police. It is easy for the latter to provoke this crime, and in case of necessity they falsify facts. It is particularly of late years that this device has been employed. The number of offences of this sort reported to the courts in 1880 was 110; 1881, 7,904; 1882, 8,033; 1883, 8,763; 1884, 9,560; 1885, 661; 1886, 10,152; 1887, 10,669; 1888, 10,669; 1889, 10,204; 1890, 11,437.

his successor. But any attempt at organized against this or that particular ministry but against the system of government, would be promptly crushed. To wish for a part of the favors of the state is deemed a legitimate ambition, which may but cannot reasonably be punished ; but to wish for the flow of its favors altogether, is considered an ambition which deserves chastisement. In this matter even a nobleman is culpable. There is no place in Italy for a man to preserve his independence, refuses to be a patronage. He finds himself in about the same position as the Hindoo who has no caste. He is an outlaw, whom everyone can attack. If a lawyer, he has no clients ; if an engineer, nobody employs him ; if a merchant he is ruined ; if a land owner he is exposed to persecution from prefects and syndics. Every door is closed against him, everyone repulses him, until the day comes when the government does him the honor to think him dangerous and finds some way to have him condemned by a court for an imaginary crime.

The government justifies all this by saying that the people are generally factious. There is some truth in this statement. In countries where legal resistance is possible, popular discontent tends to faction and ends in revolution. Of all the numerous changes of ministry in Italy, the most have been due to a spontaneous expression of public opinion, a movement like that of the Cobden Club in England, or like that which forced the Reform Bill through the British Parliament, is absolutely impossible in Italy. The government has at its call friends powerful enough to crush any opposition of this sort as soon as it seems to acquire any strength. There was never a more unpopular tax in Italy than the tax (*macinato*). The popular discontent aroused by it offered a unique occasion for a great political league, but no league was formed in the United States and in England no such movement was at first attempted ; but the government of the United States the society that had originated it and the movement

once arrested. Some years after, when the people had grown accustomed to the tax and had ceased to protest, the government spontaneously abolished it. The people, never having seen such movements come to anything, look upon them as absolutely vain and fruitless, and are not disposed to occupy themselves about them. Men who, when their hardships have become absolutely insupportable, permit themselves to be implicated in movements of a seditious character, will refuse to join a society that aims at the legal abolition of their grievances. They are sure that such a course would expose them uselessly to the vengeance of those who hold the reins of power and of their political dependents.

In the eyes not only of the people but of a great part of the bourgeoisie, politics are a luxury which only the man who has a following, who has *clients* in the old Latin sense of the term, can permit himself. A father may often be heard to praise his son by saying : "He has no vices, does not keep evil company, and does not occupy himself with politics." This feeling explains a singular phenomenon, observable from time to time — the unanimous abstention of all the electors in a particular locality by way of protest against the government. A law passed not long ago removed the justices of the peace (*pretor*) in a number of small places. The electors of some of these places now abstain from voting at all elections. Considering that their rights have been ignored, they revenge themselves by sulking at their masters, not by attempting to select new ones. I once reproached a workman, who was a very honest man, for having taken ten francs to vote in favor of a deputy. I represented to him that if he joined with his companions they could elect some one who would undertake to get the heavy taxes lessened. He answered : "All that is useless ; the heads will always do what they desire. The only good we can get is some bank notes at election time."

Election expenses, however, are not very large. As far as can be judged from rather incomplete information, thirty thousand francs seems to be the average for candidates who

have local support as well as that of the support is wanting, the expense is . . . The example given formerly by England of elections are not incompatible with parliamentary régime. The deputy who is sometimes fairly independent of electoral coteries. A person worthy an anecdote that illustrates this point endeavoring to make a deputy change him that his electors would not be content the government in all its evolutions. . . . them for a time, and then, losing patience leave me in peace. I have paid them . . . I mean to vote according to my conscience as this are exceptional. Generally the outlay as an investment,<sup>1</sup> and they were returned with a good profit.

Laws, of course, exist against electioneering are never put in force. A justice of the peace prosecutor in Venice, who were foolish provisions of these laws seriously, were in ministry, and the suit was dropped. . . . newspapers openly said that it was ridiculous to punish the buying of votes, which had been an ordinary custom.

The support of the government, however,

<sup>1</sup> *Il Corriere di Napoli* asserts that the last election the notes of the Bank of Rome into circulation in were hardly known. I cannot vouch for the truth of the assertion has been made which is supported by statistics. It is said that during the last elections several candidates offered half of bank-notes for five or ten francs, promising if they were elected. It is certain that shortly after the election bank-notes in circulation, composed of odd halves, that the financial agents of the government were obliged for a ruling on the matter. It seems that the electors successful, were obliged to stick together the odd halves and it seems that even those whose candidates were elected the second half of the notes of which they already held mistakes in matching their half notes.



than money ; and the most effective form of governmental interference is, of course, the appointing and removing of officials. On the 2nd of July, 1886, Sig. Nicotera, who has twice been minister of the interior, said in the Chamber that he was ready to furnish a long list of government clerks in the province of Avellino who had been recalled or had lost their employments for electoral reasons, and he added in characteristic words : "Certain things may be done, but they must be done well. The ministry has done them, and done them badly."

Sig. Cavallotti, speaking in the Chamber on the 30th of June, 1886, said :

In the college of Pesaro at Cagli (of this I have documentary evidence) the communal messenger distributed, together with the electoral poll tickets, the governmental list of candidates, and added a franc for each name. . . . At Arezzo rates were a little higher. The general tariff for ministerial votes, as is shown by trustworthy testimony, was a franc fifty centimes.

Depretis (Minister of the Interior) interjected : "No, it was a franc at Arezzo too." Cavallotti answered :

Excuse me, that is an error ; exactly a franc fifty was the average price ; I have written testimony of this deposited at a notary's office. At Modena, six francs ; at Alatri, a college in the Roman district, eight, ten and even one hundred francs. . . . The asylum of Tutra [an asylum for the poor] receives a subsidy of 400 francs through the kindness of the candidate N. . . . In the third election district of Novara a paper was distributed on which was written : "If you vote for these four candidates, there will be 10,000 francs for the asylum." In the third election district at Milan a printed paper was distributed which read : "Choice is easy. . . . We have four tried men of honor, who have procured for us the railway stations, the telegraph and post-offices, and who a few days ago obtained for us the following subsidies: 500 francs for the Infant Asylum, 500 for the School of Design, 1500 for the Charity Assembly" . . . At Foligno the ministerial candidate obtained for the corporation a loan of 450,000 francs from the government. . . . In the second Roman election district a certain Ferri, originally from Vallinfreda, where he exercised considerable influence, had

the cause or the result of the existing corruption. Strongly organized political parties would exercise a certain control over the coteries that are formed to divide the spoils wrung from the taxpayers; but it is precisely these coteries that impede the formation of real parties. Neither religious feeling nor aristocratic pride, two of the strongest sentiments which influence human action, have been able to prevent Italians of the highest class from asking for places, enrolling themselves among those dependent on the government and taking service under politicians whom they thoroughly despise. The absence of political parties favors the extension of the functions of government, because to obtain a majority the ministers are obliged to substitute motives of personal interest for motives of political interest or passions which do not exist. But the extension of governmental functions is, in its turn, a serious obstacle to the formation of parties. As a royalist French paper, now allied to the republic, has said: "The people must end by understanding that it is not by resisting the government that they will obtain its favors."

I am inclined to think that the want of political parties and the extension of governmental activity are the consequences of more general causes. Some of these causes are peculiar to the countries of the Latin race, and some to Italy;<sup>1</sup> others are in operation in almost all civilized states. To disentangle these causes and discover the modes in which they act would be a very interesting task, but it is one that cannot be attempted in this essay.

### III.

For several years Italy's foreign policy has been uniform; it has adhered to the alliance with Germany and Austria. The prime reason of this is the court's fear that the republican form of government may pass from France into Italy, and its belief that the alliance with the German Empire is favorable

<sup>1</sup> Sig. Turiello, of Naples, has published a very remarkable study on the peculiarities of the Italian character and their influence on the political life of the country. It would be well, however, to give more consideration than he does to the economic side of the question.

was partly to satisfy this desire that Depretis sent troops to Massowah. But this toy was not sufficient for the Italian middle class, who dreamt of great military enterprises. The governments that succeeded each other in France erred in not taking this sentiment into account; and they gave particular offense by the Tunis expedition. France might perfectly well have taken possession of Tunis without quarreling with Italy, provided it had considered and sought to conciliate the *amour propre* of the governing class of Italians. But, on the contrary, the French government seemed bent on humiliating the Italians. The German government did not commit this error. Prince Bismarck was too profound a connoisseur of human passions not to see how he could turn to account, in the interest of his country, the sentiment of the Italian governing class. By gratifying its vanity, a thing that cost him nothing, he bought the alliance of Italy and incited this country to an expenditure quite out of proportion to its straightened means.

This expenditure has been defended as necessary to maintain the independence of the country. Such is the official theory, and many persons believe it to be true. But in reality the independence of Italy is not threatened by France; and if by any chance the latter country should conceive the idea of conquering Italy, the other European powers would certainly intervene, whether formal alliances demanded such action or not. This even the most determined partisans of the Triple Alliance are often obliged to confess.<sup>1</sup>

<sup>1</sup> Sig. Chiala, writing of Crispi's visit to Berlin in 1876 to offer the Italian alliance, says: "Who, until then, had ever doubted that Germany would have considered it to her interest to help Italy if she were attacked by France, even without a treaty? Had not the German chancellor declared this without circumlocution to Count von Arnim in his letter of January 18, 1874, which had been made public?"—Chiala, *Pagine di Storia Contemporanea*, pp. 279, 280.

Senator Jacini, who is far from feeling the same enthusiasm for the Triple Alliance as Sig. Chiala, observes: "Germany was the one of the allies that had the strongest reason to be satisfied. Let us allow that there is precise equality among the three allies as to the obligation of mutual defence. But, coming to concrete facts, are all three on an equal footing in respect to their territorial claims? Certainly not. Who will dispute the integrity of the Italian territory if we do not quarrel with our neighbors? Austria is in a less perfect position,

In 1875 Italy spent only 216 millions a and navy. These expenses went on inc 1888-89, they reached 554 millions. Since decreased to 359 millions (1891-92). But has been obtained by expedients which cannot be employed. Soldiers under arms have been their time has expired, and companies have been absurdly insufficient effective force. The military magazines, including even those on the have been used up.<sup>1</sup> Military authorities say, with Italy wishes to pursue a policy which may in France, its armament must be equal to this to obtain this result much more must be spent But how the nation will meet increased expenditure problem still unsolved. Up to the present the government has attempted to balance the budget by taxes and continually making new debts. In course be pursued indefinitely? The possibilities both as to objects and rates, seem nearly exhausted many indications that an augmentation of income produce a sensible increase of revenue.<sup>2</sup> As to debt, the examples of Greece, Portugal, &c. because of the different races that live within her confines. In view, not a vague contingency, but the certainty of a struggle against the quest it has made of Alsace and Lorraine." — Jacini, *Panorama Italiana*, pp. 107, 108.

<sup>1</sup> It is characteristic of the Italian political régime that it sacrifices reality to appearances. The government wishes to be strong, at least on paper. It therefore keeps up the framework of the effective force to a limit that compromises the instruction of the army.

<sup>2</sup> Sig. Mazzola has shown, in the *Giornale degli Economisti*, that the consumption of wheat has diminished in Italy. In the *Économistes*, March, 1892, I have given an estimate which shows that the consumption of wool, which in 1886 was 68 kilos for every man, reduced in 1889-90 to 60 kilos.

The following table shows the quantity of coffee imported (100 kilos) :

| 1887.   | 1888.   | 1889.   | 1890.   |
|---------|---------|---------|---------|
| 142,650 | 140,267 | 135,484 | 139,824 |

The reduction in consumption is evident; and this generally indicates an impoverishment of the country.

Argentine Republic show that Italy is still far from the limit at which a country no longer finds loans ; but she is very near the point where a future financial catastrophe is inevitable. After the abolition of the forced currency in 1880 and the loan of 644 millions of francs which was contracted for this purpose, the great book of the national debt was closed. But this only means that Italy has no longer borrowed under the form of five per cent consols. It has continued to borrow more than ever in other ways. Civil and military pensions have once already served to conceal a loan (by the sale of annuities); and now it is planned to make them serve the same purpose a second time ; and there seems to be no reason why these methods should not be continued indefinitely. These crooked courses are among the consequences of the parliamentary régime in its Italian form. Chamber and ministers are not far-sighted. They are contented to live from day to day without thinking of the future. The policy of di Rudini's cabinet, which was rather more open than that of its predecessors, brought the country to a point where it was necessary either to submit to new taxes or to reduce the army expenses. Di Rudini and his friends, as we have seen, tried to avoid the difficulty by proposing economy in all expenses except those of the army ; but this policy proved impracticable. At the present moment the government is struggling with the same difficulty, and Sig. Giolitti is trying to escape from the dilemma by contracting new debts. It is probable that this policy of expedients will be continued as long as possible, since everybody seems satisfied with it.

A few tables will best show the financial conditions in recent years. All numbers represent millions of francs.

*Fluctuations of the National Debt.*

|                   | FUNDED<br>DEBT. | FLOATING<br>DEBT. | TOTAL. |
|-------------------|-----------------|-------------------|--------|
| 1882 . . . . .    | 11,029          | 220               | 11,249 |
| 1889-90 . . . . . | 12,442          | 352               | 12,794 |
| 1890-91 . . . . . | 12,634          | 442               | 13,076 |
| 1891-92 . . . . . | 12,768          | 458               | 13,226 |

These figures are a little dry, but they are indispensable if one wants to form an idea of the state of the country. The study of political science has been too long a branch of literature; it is time that it should take as its pattern positive and inductive science and adopt the same methods of reasoning.

Let us try to form an idea of the increase of the burden borne by the country, by examining the taxes on consumption; and for this purpose let us add together the taxes of this sort collected by the state, the communes and the provinces (these last are insignificant). We shall find the totals (in millions of francs) to be: for 1871, 437; for 1882, 641; for 1889, 806.<sup>1</sup> This enormous increase shows us that taxes on consumption have furnished the point of least resistance in augmenting the revenues. At the same time careful investigations show that the wealth of Italy has only very slightly increased from 1882 to 1889. In some cases (*e. g.*, corn and wool) consumption has decreased, so that it cannot be said that the increase of the proceeds of the taxes on consumption is due to the prosperity of the country; and we must conclude on the contrary that in a great measure, at least, the condition of the people has grown worse.

The straitened circumstances of the country partly account for the increase of emigration,<sup>2</sup> which is one of the most serious results of the régime described in the preceding pages. It is to be anticipated that the situation will grow worse and worse. The point of least resistance to taxation continues to be found

<sup>1</sup> The budgets of the communes and of the provinces are made up by calendar years (January 1 to December 31). The same was true of the national budget until 1884, but since that year it has been computed from July 1 to June 30. In order to obtain the total for 1889 I have accordingly taken the averages of the years 1888-89 and 1889-90.

<sup>2</sup> Emigration is divided into temporary and permanent, but the distinction of the two classes in the official statistics is very inaccurate. In order to avoid trouble with the authorities, many emigrants say they are going temporarily abroad to look for work, and then never return.

|               | 1878.  | 1880.   | 1882.   | 1886.   | 1888.   | 1890.   | 1891.   |
|---------------|--------|---------|---------|---------|---------|---------|---------|
| Permanent . . | 18,535 | 37,934  | 65,748  | 85,355  | 195,993 | 104,733 | 175,520 |
| Temporary . . | 77,733 | 81,967  | 95,814  | 82,474  | 94,743  | 112,511 | 118,111 |
| Total . .     | 96,268 | 119,901 | 161,562 | 167,829 | 290,736 | 217,244 | 293,631 |

before the governing class renounces the policy which has brought it there. I think it much more probable that, if a change in Italian policy takes place, it will be partly the result of an analogous change in France.

It is not a mere chance coincidence that the malversations of the Bank of Rome in Italy find their counterpart in the malversations of the Panama Canal ring in France. In both countries we have here similar effects due to similar causes. Opportunism in France and Transformism in Italy have their sole *raison d'être* in the benefits they confer on their adherents; and in the long run this system of making use of the resources of the country must lead to scandals. The first impulse is to blame individuals, but it is the political system which is really responsible. Crispi has declared, in an interview, that Tanlongo, the director of the Bank of Rome, had no perception of having done wrong. This is quite credible. In the long run, every sentiment of uprightness and honesty is deadened by living in an atmosphere which is morally corrupt. To see every one do wrong makes many people believe that wrong-doing is perfectly allowable. In France, as in Italy, the scandalous things that were being done with impunity were known to the government long before the public was aware of them. Among the ministers of both countries were men whose private integrity stood above all suspicion. Yet it never occurred to them that the first and foremost reason for which a government exists is to prevent the commission of crimes. They thought of the interest of their party, of the success of the form of government which they defended — of everything except that in civilized nations there are laws for punishing fraud and spoliation, and judges to apply these laws.

Even when the public had learned of the crimes that had been committed, the governments, instead of aiding the work of justice, tried to impede it. It was only reluctantly, under the pressure of public opinion, that it consented to allow the prosecution of the criminals; and then it placed every difficulty in the application of the law and seemed to have only one wish, that of hiding everything. It is perfectly intelligible that

a statesman should try to avoid a scandal which would discredit on his party and the entire country. This is most respectable. But it is hard to understand the same sentiment does not manifest itself when the time to arrest the offences which are the scandal.

As long ago as 1879 the Italian government irregular practices on the part of the bank presented to Parliament in that year, Minister Maiorana-Calatabiano said : " The difficulties of some of the minor establishments may lead to the need of a serious reform of the present state of things in this place." But the government let ten years pass without providing for anything except to obtain funds for its own political needs. Finally, in 1889, a reform of the banks was made. That of the Bank entrusted to Senator Alvisi and J. Biagini, an employee. These gentlemen found a secret circulation of 25,976,358 francs in bank-notes, as reported in his report :

The methods of accounting in the Bank of Rome, its issues are abnormal, its circulation is excessive, the general balance-sheet is confused, the notes issued or reserved for renewal are confounded with future illegal circulation.

With this report under their eyes, the minister refused to provide that nothing should be made public, so that we quite understand why the government did not dare to punish the offense already committed ; but why did it do nothing to prevent further offenses ? As a result, its attitude was worse than passive : it facilitated

<sup>1</sup> On the 22d of February, 1893, Sig. Maggiorino Ferraris, a time reporter of the parliamentary commission which in 1889 Senator Alvisi, examined the proposed laws regulating the circulation of bank-notes, said in the Chamber of Deputies : " The president of the commission is not unaware that, to my great grief, the government of which he was a member and which he represented on the commission at the present . . . knowingly gave false documents to the commis-



which it could not ignore by relieving the Bank of Rome from the obligation of redeeming its notes ; and but for the courageous opposition of Sig. Colajanni in the Chamber, the government would have passed a law prolonging for six years the legal-tender quality of bank-notes, including those of the Bank of Rome. In 1891 this institution found itself embarrassed by its clandestine circulation. It did not know how to redeem its notes. The government already permitted the banks to refuse redemption of their notes as far as the public was concerned, but they still had to redeem them in making settlements with each other ; this in Italian is called *riscontrata*. The government, to aid the Bank of Rome, issued a royal decree, August 30, 1891, abolishing this *riscontrata* ; and so the bank was able to continue its clandestine issue. Another year and a half passed and on the 6th of December, 1892, the government presented a bill prolonging for another six years the legal-tender quality of the bank-notes and maintaining the abolition of the *riscontrata*. At the same time Tanlongo, the director of the Bank of Rome, was appointed a member of the Senate. On the 20th of December, 1892, when Sig. Colajanni spoke of the irregularities of the bank, Minister Giolitti denied that there was anything abnormal in its management. He further said, apropos of Alvisi's report : "The thing seemed so little exceptional that I must confess I never even read that report." But this was not true. Crispi contradicted the statement, and confirmed his contradiction in the Chamber, February 22, 1893, by reading from his note-book the following entry, dated June 14, 1890 :

Giolitti comes to me ; we speak of the banks. . . . The Roman bank was severely censured by Giolitti ; he declared that the facts discovered in the inspection offer material for the court of assizes.

Giolitti did not dispute Crispi's correction. He replied : "I do not remember exactly the words I used, but since Crispi affirms them, it is the same as if I remembered them." Then he excused himself by saying that *he had been told* that everything had been put in order at the Roman Bank. But

he did not explain why he felt no necessity for having been told him before proposing a bill for the legal tender and before appointing Tanlong

In many respects, as I have said, the Italia and the French Panama scandal are comparable. But if the French nation is often afflicted with that trouble its brothers of the Latin race, itself by a great energy of reaction. It has a constitution; and up to the present time, at least, it is like a young man to whom they are a great not like an old man who can oppose no resistance. It may be that the spectacle of the immoral class, which has been revealed by the Panama produce a considerable change, at least for the proceedings of the French government; but in the present be foreseen what the change will be.

Notwithstanding the German alliance, the exercise exercises a great influence in Italy. The persons who submit to this influence do so unconditionally; this does not make the influence any the less more French books are read than Italian, while in France are scarcely read at all. France still preserves intellectual supremacy over the Latin race by its theatres, its science, by personal contact, by which Paris exercises, and by its affinity of race. It is therefore probable that if the parliamentary system of these nations is to be modified, the modification will in France and extend thence to the other nations. But whether future modifications will alleviate the evils that spring from the present régime, it will disclose.

VILFI

FLORENCE, 1893.

## THE UNSEEN FOUNDATIONS OF SOCIETY.<sup>1</sup>

**I**N this substantial volume of six hundred pages, the Duke of Argyll reviews the doctrines of English political economy and seeks to point out certain fundamental elements of truth which have been neglected or, at least, inadequately handled. He confesses that he had always felt that the old orthodox economists never really "touched bottom." He felt that on superficial facts and shallow motives they reared too heavy a superstructure of dogma.

Conclusions were reached which contradicted glaringly the actual experiences of life, because they were founded on abstract conceptions and propositions which were badly abstracted and largely composed of hollow phrases or ambiguous words. The whole system of the school of Mill and Ricardo seemed to be an artificial world, with only a few points of contact with the world of nature and of life.

Now, at last, he has joined "those younger writers who have rebelled against an authority which had been too long and too uncritically admitted;" and in this book he seeks to aid in rebuilding a "structure which has been sorely shattered."

Such is the author's own idea of his work.

Far different is the idea a reader gets of it. That the Duke of Argyll has fallen out with the old economists there is no denying; but it is doubtful if he can be said to belong, in any sense, to the new school of writers. Some of the admitted characteristics of the new school are distrust of "the jargon of 'natural liberty' and 'indefeasible rights'"; rejection of the *laissez-faire* philosophy; abandonment of the faith in the identity of private and public interests; subordination of the individual point of view to the social point of view; greater confidence in positive law and institutions; and recognition of the high ethical task of economic science. With none of these tendencies is the duke in sympathy. His only touch with the new school is his distrust of over-hasty abstraction<sup>3</sup>, and his faith in "views derived almost entirely from the observation of facts in the business transactions of life . . . ." The book has, in

<sup>1</sup> The Unseen Foundations of Society: An Examination of the Fallacies and Failures of Economic Science due to Neglected Elements. By the Duke of Argyll. London, John Murray, 1893. — 8vo. xx, 584 pp.

theory for the hire of land. Although land cannot be increased in quantity at will, neither can horses, steam-engines or opera boxes, at a given place or time. The duke denies the proposition that rent is not a part of cost and does not enter into price. Of course the thought here is that rent does not enter into the price-fixing cost at the margin of cultivation. Compare this with the caricature the duke has made of it: "It is the much-vaunted result of that theory that the rent which a farmer of agricultural land pays as the price of its hire . . . is no part of the cost of the crops he may raise upon it." That is, he supposes economists are talking of particular cost instead of price-fixing marginal cost. It has been recognized by economists that the various uses of land so succeed and overlap one another that the margin for one may well be intra-marginal for another. The marginal wheat-raiser, in order to get the land he needs, may have to pay the rent it would command from the cattleman. This connection of uses and superimposition of rents is recognized by Professor Marshall, when he says that the doctrine that rent does not form a part of cost is not true of particular crops, but only of agricultural produce "taken as a whole." This the duke regards as a fatal admission, inasmuch as what is false "as applied to each separate item in a long list of particulars," cannot be true "when applied to the whole of these items grouped together." But is this so? It is true, for example, that in the state the actions of the citizens, taken individually, are determined by the laws. No less is it true that the actions of the citizens, taken as a whole, determine the laws.

The theory of rent demolished, our author passes on to the cost-of-production theory of value, in which the fallacies of the rent doctrine inevitably reappear. Here the duke mistakenly interprets as a theory of market value what claims to be a theory of normal value to which market values tend. It is easy then for him to show that in the case of a sudden increase of population the price of food does not go up because of a greater marginal cost, but because of the accession to demand. Price advances before the resort to inferior conditions of cultivation. The higher price is, therefore, the cause and not the effect of the costly extension of supply. Now while this is perfectly true, it does not overthrow the old doctrine, since it introduces dynamic conditions, while the cost-of-production theory has been wrought out for values under statical conditions where an equilibrium has been reached. To point out that values can not be coupled even with marginal cost so long as movement continues, is

perhaps to limit the cost-of-production theory, but throw it.

But the author exposes himself to far greater criticism. He stigmatizes the whole doctrine of marginal cost as "the cost of the marginal portion should be the norm which market values play, seems to him as paradoxical as the whole burden of the camel should be credited to that breaks the camel's back," or that the last half should be regarded as the pressure that causes the lift.

And so we see that even if it had been true that the rise had been due, which it was not, to the rising cost of cultivation, it would be equally absurd to debit the value of the whole supply to the costly addition to that total.

Here we have a most remarkable instance of dogmatism. Throughout the book nothing is plainer than that the author is totally unacquainted with the newer analysis of the market. He has done so much to make economics a science. A little more knowledge of the unseen foundations of market price would have made him a small measure the search for "the unseen foundations of the market." To the "practical man" it does indeed seem hard that the value exchanged in the market should have to submit to the uniform market price. It outrages his sense of justice that the valuations of the marginal unit should so prevail over the valuations. It seems absurd and repugnant to his common sense that in an isolated market it should make no difference whether ever how much or how little the valuations of intra-marginal buyers are below the marginal valuation, or how much the valuations of the intra-marginal buyers are above the marginal valuation, things are so. Stumbling-block and paradox though they are, they exist and must be reckoned with. The dogmatism exercised by the marginal portion of normal supply is a thing of price-fixing may be manfully grappled with, but it is not to be learned from proverbial camels and lifted safety-valves. It is to be overthrown.

The author next dwells on that

monstrosity of pretended science—that the price of a commodity is regulated by the cost of the worst and most expensive agent in its production. The truth of the exactly opposite proposition is confirmed by continual and familiar experience and observation [With

production] the exchangeable value of every article or commodity is always seen to be regulated by the best and cheapest, and not by the worst or dearest mechanism of production.

Here again the criticism limps. Reference to later economic authorities would have shown the duke the needlessness of re-exposing the errors of the Ricardian economics, and would have relieved him from the task of issuing forth as a Don Quixote of economic science to level his lance at harmless wind-mills. Here as before he requires the marginal-cost theory to justify itself as a theory of dynamic values, although it never pretended to be aught but a doctrine of normal or statical values. It is certainly true, as the duke contends, that in the struggle of old methods of production with new, not the unfittest, but the fittest survive. When the struggle results in the survival of one, it is the cheapest and not the costliest that survives and fixes the value of the product. But suppose it is impossible to supply the market by the cheaper method. Suppose that both methods must survive in order that supply may be sufficient. In that case value will ignore the cost of the cheaper portions of necessary supply, but will come into relations with the cost of the more expensive portion. When, therefore, the dynamic influence is spent, when the equilibrium is restored, when competition, having worked itself completely out, has resulted in the survival of methods implying different costs, then the law of greatest cost as accurately expresses the tendency of values as did the law of least cost during the struggle of methods.

In spite of the mistakes and misconceptions just noticed, the duke in his pregnant chapter on "The Development of Speculative Fallacies" presents us with an original line of thought well worthy of our attention. He shows how, with the development of economics, the analogy between rent and other forms of profit led men to notice that "advantage, whether natural or acquired," or "any difference in favor of certain producers" or of "production in certain circumstances," becomes the source of a gain governed by the same laws as rent. This is

a generalization which identifies the economic position of every man who rises in the least degree above the dead level of those around him, even in respect to the natural gifts of mind and character, with the position of every other man who has any other possession of any other kind having the same effect of conferring upon him some industrial advantage.

Thus no sooner do we reach the idea of differential advantage than the insidious and dangerous implications of the Ricardian

to take refuge with the Bastiat school of economists. More than once has this significant exodus come to the notice of the writer. That this uneasiness is due not to the theoretic unsoundness, but to the embarrassing practical implications of English economics, is shown by the ignorance the apostates display regarding the new doctrines that, in the estimation of scholars, have done most to amend the shortcomings of the orthodox system.

After his critique of Ricardian doctrines, the duke pays his respects to Mr. Henry George—the man who gave the Ricardian rent theory a turn most unpleasant to British landlords. The dark picture of American conditions that Mr. George shows is, the duke complacently argues, a plain confirmation of the Malthusian proposition, which he considers “one of the most clearly ascertained of the facts of economic science.” The wickedness and corruption of American democracy, especially in cities, shows how unfit are our governing bodies to administer land as communal property. The proposition that land should not be paid for, but simply taken, is a piece of gigantic villainy. The movement to socialize land is a case of Ahab lusting to get Naboth’s vineyard, “the inheritance of his fathers.” Touching picture, this! Naboth, the British landlord, clad in smock and armed with mattock, toiling in his vineyard, and the rich, despotic Ahab-Demos pouncing down and seizing his little property! This, taken with the other Biblical allusions that abound in the book, would seem to indicate a clever attempt to exploit the well-known Hebraism of the British Philistine in the interest of the imperilled landlords.

After reviving the hoary fallacy that luxury makes work, in describing an American millionaire who, in building his palatial mansion, “had spent among the artificers of that city a great sum of money, and had, in the same proportion, contributed to the only employment by which they live,” the author passes on to the wage-fund theory. He rejects this doctrine and prefers to the idea of a fixed fund, the later notion—that of a flowing stream of goods from which all particular incomes are derived. But what importance the employer loses by the concession that wages are paid out of product, is immediately restored to him by the duke in his analysis of the *entrepreneur* function. He agrees with the French and later American school in magnifying and even glorifying the captain of industry. To conceive the source of wages as merely a stream of commodities, is too “materialistic and mechanical.” Speaking of a certain manufactory of chinaware, he holds :

The real wage-fund was, first, the brain-work of the original conceiver of the whole design ; secondly, the brain-work of the capitalist who estimated the degree of confidence to be placed in his conception ; and, thirdly, the mental appreciation of the public as regarded the beauty of the ware.

And so, in many enterprises, there coöperate the conceiving mind, the constructive mind, the risking and self-denying capitalist, and, lastly, the manual laborers, who, blind to all but the visible and material, are prone to exaggerate their own importance and overlook the contributions of the other coöperators. The laborers must be taught that in the brain of the conceiver lies the great source of their wages, and must abandon the dangerous fallacy that those who toil visibly with their hands are the just owners of the product.

Now, the happy conjunction of conceiver, planner and capitalist that affords the laborer employment, presupposes, above all things, security. That is one of the "unseen foundations," because it conditions all Design. The undertaking of the typical modern industrial enterprise, implying, as it does, the coördinated and harmonious outlay of many large sums in special directions and in particular ways, through a long period of time, ere the hoped-for value can appear, presupposes a vast amount of anxious calculating to discover if the enterprise can be made profitable, and, if so, what methods lie along the line of least economic resistance. This, in turn, presupposes such calculableness in the problem as is afforded by abundance of exact data, permanency of properties and relations of the elements dealt with, and absence of unforeseeable and incalculable changes. Nothing, therefore, can be more needful to industrial health than to preserve the calculableness of the industrial factors. The liability of the conceiving mind to be paralyzed by uncertainty, has long been recognized in the popular phrase, "sensitiveness of capital."

The duke's analysis of modern enterprise and his study of the functions of the *entrepreneur* are very fine, and constitute by far the most original and valuable contribution in the book. There is about it a touch with real life and a grasp of the concrete which dispose us to concede him his point. We must admit that the adoption of long-period methods, together with production on a large scale, lends greater importance to certainty and security. In other words, there is an opposition between rapid industrial advance and rapid political and social advance. For its maximum efficiency private enterprise requires unchangeableness of taxes, laws, institutions, relations and rights.



But is there not another "unseen foundation"—one which is endangered by pressing this doctrine too far? The duke's "security" is, after all, nothing but the ancient conservative watchword of "order." He has simply traced for us the need of order in the industrial sphere. But by fixing our eyes on security we lose sight of progress. And it would be hard to prove that at the present moment civilized communities are risking security for the sake of progress. The cause of growth—of readjustment—is always unduly weak, because it must encounter not only those who, like the duke, idolize security, but also those who, from intellectual slothfulness or crass stupidity, cannot value either security or progress, but still fling their brute strength on the side of "whatever is." To press to its last consequence the theory of possession and security, would be fatal to growth and life. If the individualistic ethics of the Liberty and Property Defense League should prevail, the state—one of the chief organs of social progress—would be as helpless in the net-work of vested interests and individual rights as Gulliver in the toils of the Lilliputians. If possession be suffered to lord it over other canons of right, every avenue of progress will be so choked by a thicket of private claims for compensation and damages that each step will cost more than it is worth and reform will become impossible. When the day comes that the process of healthful readjustment is halted by the accumulation of impudent and exorbitant claims resting on no support other than prescription or possession, the upburst from below will show that security and possession are not the only "unseen foundations of society."

But it would be easy to prove that a society recognizing the exclusive sacredness of possession and of contract would be far from realizing security. What the duke values so highly is possessor's security; for his political economy is, after all, nothing but economics for the landowner and capitalist. As to the insecurity that is really menacing in our day—the precariousness of employment, of livelihood, of support for old age, of freedom from employer's dictation—the duke has no word. Security would appear to be something invented for the holders of tangible property, but not for the owners of skill, experience or labor power. It is something very necessary for those already most secured against the ills of life, but quite superfluous for those who already bear the main burden of pain and uncertainty entailed by our industrial system. Taxing each according to product guarantees security, while shifting the burden to the holders of unusual natural opportunities

endangers security and undermines the "unseen society!"

The duke next takes up the problem of monopoly

Monopoly is that system under which the possession of a thing does not carry with it the right to the possessors to deal with it as they choose. [It means] an exclusive right of dealing in a thing. The right is given to men to whom the article does not belong. The purchaser who is the monopolist, in virtue of his privilege, is enabled to create, of purchasing at preferential rates. . . . There can be no such thing as a "natural monopoly." The very phrase is a contradiction.

The essence of monopoly is something artificial. Monopoly implies "restraints, artificially imposed, for the purpose of preventing the automatic movement of natural values. Legal prices for gas, "commission" rates for elevators would come within the duke's definition. In other words, in hand, there would be no monopoly element in the market. For transportation, gas, ferriage, wharfage, coal or oil.

All this pains to divorce the odious word monopoly from something the duke justifies, and to attach it to something he strongly dislikes, is a very clever diversion in favor of individualism. Holding the doctrine of value he should defend and justify that category which men have created and named "monopoly value." But, instead of breast-feeding feeling against non-competitive values, he seeks to affix the word monopoly to all interferences with natural supply-and-demand values. This strategy, however, will not avail him. Economists will not suffer him to mask his playing fast and loose with settled economic terms.

The law of supply and demand, as developed by the law of marginal utility, is the accepted law of market value. It is the normal values to which these tend to conform, and which are covered — the law of marginal cost and the law of supply. The former prevails with competition; the latter when competition is absent and supply is controlled by a single will. Under these conditions market values tend to conform to the rate at which the monopolist the maximum net revenue. Owing to the existence of demand, this fixing of exchange rate can be controlled by control of supply. The essence of monopoly as an artificial restriction of supply, as contrasted with the normal results wherever there is free entrance of production into the given area of production.

Now this conception is valuable to economists, inasmuch as it unites a number of related phenomena having laws and peculiarities of their own. But the conception of monopoly which the duke offers is economically worthless. It is a political, not an economic category. It sunders like economic phenomena and unites those economically unlike. A disturbance of natural values by legal interposition is monopoly, but the same disturbance effected by the demoralizing and unscrupulous measures of an aggressive "combine" is excluded from the definition. On the other hand the relief given to a people by the fixing of reasonable rates by a railroad commission, is classed with the odious privileges once granted by reckless kings to favorite courtiers.

From the point now reached we can glimpse the trend of individualistic economics. The duke calls Henry George a "preacher of unrighteousness" such as the world has never seen. Henry George points out that there is one great element of income for which no real service is rendered, *viz.*, economic rent, and reasons that therefore this should be enjoyed by the community. Now comes the Duke of Argyll to show that differential advantages and the gains therefrom are everywhere. Therefore we must throw away the concept of cost, blot out the words "earned" and "unearned," and no more inquire what services men render for what they receive. Since we cannot bring values to conform wholly to sacrifices, let us utterly surrender ourselves to their blind drift. Since men's rewards cannot be made proportionate to their services, let us cease hoping for any degree of correspondence. Let us re-define value so as to avoid troublesome collisions with ethics. We will deem righteous and sacred all values that are "natural," and wicked all values that have been "interfered with" by law. We will hold in the odor of sanctity all interferences by private rascality for selfish gain, but will anathematize all interferences by the public power for the common weal. The desperate devices of banded commercial pirates to check the flow of productive powers and create artificial scarcity, we shall regard as "free enterprise"; while the effort of the state to clear away these obstructions is "monopoly."

In view of the moral indifferentism of these new doctrines, may it not be possible that when society has done as much to bring men's rewards to correspond to their deserts as it has done to make their actions conform to their rights, the Duke of Argyll, and not Henry George, will be deemed the "preacher of unrighteousness"?

EDWARD A. ROSS.

him, accordingly, explaining the downfall of Spanish and French power in the New World in terms of the inherited psychology and institutions of those races. Mr. Payne, on the contrary, revives, with the modifications and limitations suggested by later and better knowledge, the view of Buckle. His account of the discovery, going over the ground and much of the material already made familiar in the pages of Winsor, Fiske and other recent writers, is valuable chiefly for the prominence it gives to such purely physical causes as ocean currents and continental configuration in determining the time and circumstances of the great voyages; while in the second book we have a study of the influence of physical geography upon aboriginal culture and, through the latter, upon colonization and white civilization, which surpasses in penetration and suggestiveness all previous work in this direction.

This second book demands all the space that can be accorded to the entire volume in a brief review. Works on American history usually have described the aboriginal life, but as a thing apart, in no way entering as an efficient cause into the sequence of white civilization. In an argument of great vigor, based on facts that everybody knew, but to the full significance of which all historians have been blind, Mr. Payne shows that the direction taken by American history cannot be explained by European influences only. Under papal authority Spain became possessed of the whole continent except that part of tropical South America, the north-east angle, which fell to Portugal. Her claim was independent of settlement or colonization. England and France could found claims only on discovery, actual occupation and settlement. Yet when they entered seriously upon the work of colonization, all those portions of North America best adapted to civilization of an European type were still virgin land, because Spain had expended her energies in conquering and plundering the populations of Mexico, Central America and Peru. Spain followed this policy because these populations, unlike the northern tribes, were politically and religiously organized, permanently established on the soil, agricultural and industrial in habits, and rich enough to be worth robbing. It is evident, therefore, that the causes which had determined their development and confined it to regions in which white civilization could never flourish—regions which to-day, in fact, are essentially aboriginal in population and modes of life—were the true antecedents of American history, and that they were American, not European, causes.

advantage over polytheism in that it reduces the costs of sacrifice, and that therefore on economic, as well as on rational and emotional grounds, a non-sacrificial and spiritual religion like Christianity is the only one compatible with civilization of a high type. But in these explanations Mr. Payne does not, after all, go far enough, and this is the chief fault of his work. He does not show us how or why a change from the natural food supply to an artificial supply may or must take place under given circumstances, or why, after it has taken place it must, rather than does or may, effect social transformations. These are problems that can be dealt with only through an employment of those modern theorems of utility, cost and value that have been elaborated in recent political economy. Their application to sociological questions cannot be long delayed.

A minor criticism may be made in closing. Mr. Payne's notions as to the origin of spirit worship and of gods are by no means clear. He brushes aside Mr. Spencer's ghost theory with small respect, and evidently thinks that a belief in spirits precedes all savage reasoning on dreams, shadows, *etc.* The whole controversy on animism *vs.* ghostism is becoming absurd. All the facts yet adduced on either side are most easily and naturally explained by the supposition that the savage interpretations of causation which are known respectively as animism and the ghost theory, are both too subtle and complicated to be primitive. They are slowly differentiated from a jumble of ideas that we can now recognize as belonging partly to one class and partly to another, but which were hopelessly confused at the dawning of human thought. Whatever the difficulties presented by any explanation, they are nothing to Mr. Payne's amazing assumption that spirits were "invented." On the other hand, what Mr. Payne says on the origin of totemism is admirable.

FRANKLIN H. GIDDINGS.

*The Eve of the French Revolution.* By EDWARD J. LOWELL.

Boston and New York, Houghton, Mifflin & Company, 1892. — viii, 408 pp.

Two great historians have already written, from totally different standpoints, elaborate works on the *ancien régime*. But both de Tocqueville and Taine pursued their investigations merely as introductory to studies on the French Revolution itself, and behind every line they wrote the influence of that great upheaval of society may be seen. Both these writers endeavored to show that the

events of 1789 were the inevitable consequence of the continuation of eighteenth century institutions. Thus the title of the last chapter is: "Comment la Révolution même de ce qui précède." Such a method most nearly emphasizes the vicious sides of the French social system. Lowell has conceived his task differently; he purports to show the "social and political conditions existing in the XVIII," without reference to subsequent events. Farther than that of his precursors, but for its execution it lacks intellectual depth and vigor.

The materials used have been mainly contemporary writings of the economists and philosophers, the archives, the *cahiers*, as well as the numerous memoirs on this period. The French historian to whom Mr. Lowell is indebted is M. Babeau, without whose aid, as the author acknowledges, several chapters of the book could not have been written. The modern German historians and economists, with the exception of von Sybel, have been totally neglected. We find any reference to that excellent little book *France en 1789*, nor to Stephen's *History of the French Revolution*. The most signal omission in the bibliography is that of Loménie's comprehensive work on *Les Mirabeaux*. The omission of this work from the bibliography, is a serious defect. For even if we do not accept Mr. Stephen's account of Mirabeau, it cannot be denied that this great political philosopher deserves some mention in the scope, in which a number of pages are devoted to the *Sièges*. A short account of the vicissitudes of the career of Mirabeau would have thrown much light upon the peculiar features of the *ancien régime*.

As regards the arrangement of the material, there is a want of proportion and a suggestion of padding. Too many pages have been devoted to giving outlines of the works of Rousseau and other writers. While in the case of such works as the *Contrat Social* and the *Esprit des Lois* it is legitimate, there is absolutely no reason, in a book giving an elaborate outline of the *Lettres Persanes*, to devote an entire chapter to the *Nouvelle Héloïse* and to the analysis of Locke's philosophy is also superfluous, as is the criticism of the effects of the *gabelle* (pp. 222, 223), at least, out of place.

In spite of these defects the book is worthy of a good deal of praise. The style of the author is vigorous and lucid; his thought is judicious and impartial. Mr. Lowell has emancipated himself from the *doctrinaire* theory that nothing of good is to be found in the *ancien régime*. He criticizes the natural-law school from the standpoint of that era and not from that of modern historical evolution. Of the doctrines of this school he justly says: "They suited the stage of civilization which the world had reached. . . . Their very exaggeration was perhaps necessary to enable them to fight, and in a measure to supplant, the older doctrines which were in possession of the human mind." Mr. Lowell, however, has added but little to our positive knowledge of the period, though he has put many old facts into a new and occasionally a more accurate light. While in some respects his picture is more complete and impartial than that of Taine or de Tocqueville, Mr. Lowell, as regards brilliancy of expression, philosophic breadth, acuteness of analysis and originality of thought, can in no manner challenge comparison with these historians.

GEORGE LOUIS BEER.

*Formation of the Union, 1750-1829.* [Epochs of American History.] By ALBERT BUSHNELL HART. With Five Maps. New York and London, Longmans, Green & Co., 1892.—12mo, xx, 278 pp.

*The French War and the Revolution.* [The American History Series.] By WILLIAM MILLIGAN SLOANE. With Maps. New York, Charles Scribner's Sons, 1893.—12mo, xxii, 409 pp.

The art of properly condensing history is such a difficult one that it is almost impossible to praise too highly a writer who, like Professor Hart, has succeeded so well in it. His volume on the *Formation of the Union* is the best piece of condensed historical writing that I am acquainted with. Apart from the excellent apparatus of maps, contents, index and bibliographies that will delight every teacher; apart from the careful selection and arrangement of matter; there is something that distinguishes this volume from nearly all others of its class. I mean its style, its manner of saying just the right thing in just the right way—in a word, its thorough readableness. There is not a dull page in it; and, what is more remarkable, there is little or no evidence that the author has sacrificed or distorted the truth of history in order to make a

and political reorganization that were manifest in the two decades succeeding the war.

Professor Sloane's book belongs to a series which is intended to be more exhaustive than that of which Professor Hart is the editor. Practically, he has three pages at his disposal to Professor Hart's one ; and this larger space, and the consequent sense of roominess, have had some effect upon both his style and his matter. His book is not wanting in what the French term *longueurs*. For example, he will often give several paragraphs to European affairs that might be recalled to the reader's mind by a sentence or a phrase ; but, perhaps, he can urge for this the popular character of the volume and the popular ignorance about such matters. Be this as it may, Professor Sloane is certainly a conscientious writer, who has studied his period well and has a broader grasp on the principles of general history than most specialists are wont to have. Many a paragraph will be found to furnish copious food for thought ; and such a masterly chapter as that on "The Peace of Versailles" would alone justify the existence of the book.

The volume opens with a description of the English people in the eighteenth century (the propriety of which in such a volume might be questioned), a good account of colonial institutions, and a sketch of the relations between the English and French in this country prior to 1756, with a brief but satisfactory description of the Indian tribes. Five chapters are then devoted to the details of the French and Indian War. Here Professor Sloane shows his powers of description at their best in his very excellent account of the capture of Quebec. His treatment, too, of the Peace of Paris is a great improvement on the usual method of popular historians, who are too apt to pay little or no attention to diplomatic details.

The account of the Revolutionary War occupies nearly half the volume. The treatment of the causes, if a little lengthy, is suggestive, and gives the British side with more than usual fullness and fairness. The strictly military details of the war are presented with much care.

Like Professor Hart, Mr. Sloane inclines to a nationalistic interpretation of the union formed by the colonies for mutual defence ; but he gives fuller weight than the former writer to the particularistic ideas and tendencies of the time that militate against such an interpretation. In view of these particularistic tendencies it seems rather impracticable to lay much stress on the nationality of a people who, in the mass, were more conscious of their separateness,



unless one is determined to solve constitutional cut-and-dried fashion adopted on the Northern side his recent volume (*cf.* this *QUARTERLY* for September and on the Southern side by such writers as the *Is it not time to give the constitutional lawyers a methods, and to turn over to them, at the same use, Mr. Gladstone's famous saying?*

Professor Sloane's concluding chapter, "Weaknesses," sums up the character of the government bequeathed to us. His judicious volume will contribute materially to the study of the subject, as distinguished from the long current of this whole period.

*The City-State of the Greeks and Romans.*

FOWLER, M.A. London and New York, Macmillan.  
— Small 8vo, x, 332 pp.

Conceding the accuracy of the author's preface with respect to this book, that "there is absolutely no one, except a very few readers, I think, will be disposed to quarrel with having put it in print. Ancient history and politics are *a priori* so attractive to students that any healthy student in this field can be regarded as superfluous. Mr. Fowler's book on the ancient state will hardly fail to attract any intelligent student who takes it up. It presents a sketch of all the salient features of development, the structure, the action and the decay of a type of state life, and it presents this with a method suggestive and in a style that is most readable.

The birth of the city-state in the East the author traces to the dim centuries between Mycenaean and political Greece. On the western peninsula, he finds that the date is absolute. In Hellas, he traces in broad outline the development of the state in Athens till the culmination in a perfect democracy. He follows the development to its climax in a perfect Democracy and oligarchy alike are then described while the city-state sinks into the grave prepared for it by empire.

The author's descriptions of institutions are concise and his analysis of social aims and tendencies shows good judgment; his appreciation of the Athenian and Roman is most sympathetic. It is possible that his enthusiasm

of Pericles has brought him, while discussing this period, just a little in conflict with the sound Hellenic maxim, *μηδὲν ἄγαν*; but only a Philistine would seriously censure that in a work designed as a stimulus to loftier culture. Again, the author's temporary habit of the superlative at this point may account for his description of the Greek democracy as unsurpassed in political and legal conservatism till the advent of the great American democracy (page 170), though shortly afterwards he asserts that "the conservative instinct . . . was far stronger in the Roman than in the Greek" (page 211).

But no higher tribute is necessary to the book than the statement that the flaws just suggested are the most serious it presents. Taken as a whole, it is a most satisfactory summary of the philosophy of the ancient state.

WM. A. DUNNING.

*Auswanderung und Auswanderungspolitik in Deutschland.*

Berichte über die Entwicklung und den gegenwärtigen Zustand des Auswanderungswesens in den Einzelstaaten und im Reiche. Im Auftrage des Vereins für Socialpolitik, herausgegeben von Dr. E. VON PHILIPPOVICH, Professor an der Universität Freiburg i. B. Leipzig, Duncker & Humblot, 1892.—xxxiii, 479 pp.

The heartiest praise must be accorded to Professor Philippovich and his collaborators for the excellent and thorough way in which they have fulfilled the task assigned to them by the *Verein für Socialpolitik*, and given us an authoritative history of emigration from the different states of Germany, with a description of the legislation in each regarding that important subject. Emigration, on its present scale and under present conditions, is essentially a modern phenomenon; nevertheless, the question of the attitude of the state to it, and its relation to the interests of the community, are general questions of political science upon which it is extremely useful to have the light of history. These essays furnish us, as it were, with the necessary perspective to complete a picture which hitherto has been all foreground. We see not only the gradual growth of the movement itself but also the evolution of a public opinion in regard to it.

In all these states we find the history beginning with the mediæval prohibition of emigration. The man belonged to the community and could not throw off the bonds of allegiance without the consent of

The philosophic tone of the book is admirable. As Professor Philippovich says, there is no sign of a cessation in the movement of emigration. Owing to social conditions and to the influence of the thousand bonds of connection between the emigrants and those who have stayed behind, it has become almost a normal movement of the population. The government could not stop it even if it desired to. But it can prevent abuses; it can extend its care to its people even when they are about to leave the fatherland; it can encourage every effort to establish relations of affection and mutual interest between Germany and her sons scattered throughout the world.

RICHMOND MAYO-SMITH.

*Socialism and the American Spirit.* By N. P. GILMAN. Boston and New York, Houghton, Mifflin & Co., 1893. — 8vo, 376 pp.

Mr. Gilman's volume is a distinct and welcome addition to the growing discussion of the nice issues between individualism and collectivism. It must be granted that the "American spirit" in regard to these special questions stands for a fact of real importance. The Anglo-Saxon spirit, or even the spirit of Great Britain, would be far vaguer and more open to obvious criticism. Australia, for example, shows us phenomena of state and municipal activities which go much beyond the experience connoted by the "American spirit." This latter, Mr. Gilman says,

will hold back the state from no field which the state can cultivate better than private persons, or in companies, because of any theory of individualism. It will close no career to lawful enterprise and private talent because of any theory of socialism. It will be content to be opportunist and serve its own time, as it can live only in the present. It can be said with entire confidence that American legislatures make no laws out of an unquestioning adherence to a rigorous and vigorous theory; nothing has occurred since socialism has been more warmly discussed here that indicates any fundamental alteration in the tendency or the temper of the American people. They have legislated for their own actual condition, with no particular reference to individualism or socialism. [Page 188.]

The above may be said to characterize with much precision the past, and upon the whole, the present attitude in America toward socialism. It is the genius of the practical spirit to care little for names or phrases. This trait of political character in the United States gets no stronger emphasis from Mr. Gilman than from those like de Noailles, Boutmy, von Holst and Bryce, who have studied

our institutions with most care and intelligence. says : "In the United States democracy has not the luxury of a philosophical theory. It has remained realistic, strictly practical." Bryce is quoted as saying

Their greatest achievements have lain in the internal development of the country by administrative shrewdness, ingenuity, and unequalled dexterity in applying the principle of association by means of private corporations, or of local public or quasi-public

Mr. Gilman shows great skill in the portrayal of the dominant instinct to go straight to the mark, independent of traditions. The strength of his admirable book is the recognition of this historic quality of the American spirit, and the accuracy with which it is brought to bear upon the conditions which individualism and socialism turn. Nothing more than to remind us of these facts — nothing better than to make it clear before our minds that our social and political problems must be dealt with along the lines and in the spirit of the American. The state socialism of European countries has much of warning as of encouragement, and even the lessons from which we may learn much can only teach us that the "American spirit" is so fully ours as to preserve us from slavish imitation.

It should not, however, be forgotten that the essence of this spirit is not to fear imitation. "Abroad be damned, at home be faithful to what is best in this spirit as are the heroes of the past which would lead us to copy the socialistic experiments of other states. Economic conditions in the world market are so alike that the greater differences of method and administration are sure to pass away. It seems difficult to see why Hudson manage her horse-cars with such success, or the city of New York to introduce to such advantage the municipal control of houses, while the same should not hold eventually of other cities. Providence. Mr. Gilman uses with force the current conditions in the present condition of our civil service such extensions would be open to all the obvious perils of political corruption. To those who ask for such control of street railways, the answer is "This notion is purely *a priori*, and it conflicts with the principle of the state is to do anything more for the public than to maintain the existing agencies must be first thoroughly reformed. This argument has played and still plays a great part against the extension of new powers to the *mir*, as

against the claims for Irish home rule. It has even had immense use in Germany against the very municipal reforms which have proved their excellence. It is indeed an argument that has played rather a sorry rôle in the history of social improvements.

There is so much truth in Mr. Gilman's view, that the fear must be seriously met and the dangers most carefully guarded against. Yet it is safe to maintain that a cautious extension of state and municipal functions may itself become part of the purifying process. One reason why the citizens of German towns are more and more careful to secure a trained business man for mayor is because they have been brought to see that inefficiency in the executive costs the electors far too dearly. How are we likely to train our voters to see this, or greatly to care for it, unless city officials have such business responsibilities thrust upon them as will show openly and clearly how direct a relation exists between the voters' pockets and good business management? Nothing seems now more likely than a slow and cautious extension of such municipal functions as one element in this educational process. The author's whole line of reasoning seems to allow for this. Nothing is more characteristic of the "American spirit" than the inventive genius, and no reason can be given why this should not have an application to social and economic policy at those points (as gas works and street railways) where tentative action may most safely be applied. To what extent such action may be carried to the common good no one of course knows, but experimental legislation will alone answer the question, and there is much experience to show that such action becomes itself a part of those educational forces which tend to make secret jobbing impossible.

The volume is so excellent that one regrets to find that old unfairness of definition which makes the socialists appear absurd in wanting or expecting to reach their goal *at once*.

The state socialist passes lightly over such developments of advancing civilization, and calls for drastic legislation to reach the desired end immediately.

But human progress were just as much a vain thing if its method could be changed at once. . . .

Such expressions in reference to the method or expectations of the great mass of leading socialists, are an unconscious appeal to the gallery which one would leave unnoticed except in a book of such singular breadth and fairness. If Mr. Bellamy became dizzied in his anticipations, his weakness should not be put upon the saner leaders of the movement.

JOHN GRAHAM BROOKS,

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poor-law administration, notwithstanding the reforms that followed the exposure of 1832, is still the conspicuous illustration of the truth. But they find a particular reason, hitherto generally overlooked, for the pauperizing effects of the law. A painstaking investigation has convinced Mr. Booth that poverty is essentially a trouble of old age. All the details of this investigation are given in the first half of his book, and the reader can criticize for himself the construction of the statistical tables, which show that old age is the chief cause of pauperism in 208 out of 634 individual cases, or 32.8 per cent, and a contributory cause in 107 more. From any point of view it is clearly and beyond question a fact associated in one way or another with pauperism in nearly half of all individual instances, and nothing like the same weight can be attributed to any other one specific cause. So extensive a failure to provide for old age by saving in earlier years, Mr. Booth attributes in part to sickness, inadequate wages and an industrial system that has no use for elderly men; in part to the hopelessness or the indifference that such facts must generate. When men are convinced that, in spite of their best endeavors, they must at last become paupers, they will hardly save as much as they might. Therefore, accepting the fact that the state must in any event provide by rates or taxation for a large class of aged persons, Mr. Booth and the other writers mentioned would substitute for out-door relief under the poor law a uniform state pension for all persons sixty-five years of age and over.

Finally, Mr. Arnold White and the authors of several essays which he has brought together, without undertaking to criticise these or any other plans for the diminution of pauperism, shows how hopeless must be any attempt by public or by private effort to provide for the destitute, so long as the impoverished of nations in which such provision is less adequate may, as immigrants, enter freely into its benefits. This volume, however, is merely a presentation of facts already known, rather than an original investigation, and need not detain us further.

Thus, starting from a proposed state prevention of poverty and pauperism, we pass, by a process of criticism, through plans of organized or unorganized private philanthropy, back to state action.

In Mr. Godard's argument for socialism there is nothing sufficiently original to warrant the reviewer's notice, except his attempt to reformulate its principles to conform to recent changes in economic theory. The labor-time explanation of value has disappeared, and we read of marginal utility. The importance of the employer func-

being organized along the lines of Mr. Godard's discussion, and General Booth's plan has been put into partial execution in spite of his critics, the proposition to make some sure and uniform provision for old age has taken the stronger hold on public opinion. Though it did not originate in continental thought or policy, the experiment of state insurance in Germany has given it weight. Various methods have been proposed, ranging from the organization of voluntary old age insurance to the state endowment advocated by Charles Booth. In Mr. Wilkinson's and Mr. Spender's monographs these various plans are critically reviewed, and all but the free and uniform pensioning of all persons over sixty-five years of age are dismissed as wholly impracticable for Great Britain. The Englishman, it is argued, will never take kindly to any state-aided system of insurance based on compulsory contributions from wages, and any system without the compulsory feature would be an actuarial failure.

As it is from Mr. Booth's investigations and arguments that the other articles derive their data, criticism must concern itself chiefly with his work. No one could more accurately measure its scientific value than he himself has done in his preface. The argument of the second part is founded on the picture of pauperism in Stepney, which constitutes the first part. This, as Mr. Booth warns his readers, is not a general "or even sufficiently representative" examination of the pauperism of London; still less is it representative for England, though a short description of one country union is given. "It is, therefore, only as a picture that what is here written should be regarded—true as far as it goes and possibly suggestive, but very incomplete." Nevertheless, its qualitative and indicative value is superior to anything of the kind that we have had hitherto. A long chapter is filled with detailed statements of individual cases of pauperism, and the facts thus brought out are classified and tabulated with care. So far as they go, then, they fully warrant the inference that old age is the chief objective factor in pauperism.

In the argument for endowment, two considerations should receive searching examination before the affirmative conclusion is accepted. It is a momentous departure from the traditional policy of English-speaking people to create a legal right to old-age maintenance by the state. What would be the economic and moral effect on that margin of the well-to-do classes which is composed of families whose earnings now place them just above the line of those who would gain exactly as much in old-age pensions as they would lose by new taxation? What would be the reaction on the character of govern-



Professor Loria really makes two points : first, that the growth of law, politics and morals is based primarily on economic relations ; second, that the evolution of economic relations is the simple working out of one cause—the suppression of free land. These two theses, although intimately associated in the mind of the author, are not necessarily dependent on each other. The one may be true and the other false. As a matter of fact, the two are of very unequal importance. Let us take up first the main thesis.

That economic facts are at the bottom of political changes was already recognized in the seventeenth century by Harrington, and has since then been urged by other writers. But no one, hitherto, has brought to bear upon the alleged connection such profound erudition as that of Loria, or has sought to extend the explanation to so many well known social, legal and religious facts. In the first book we have an explanation of the economic basis of morality. This, while ingenious and interesting, cannot be dissociated from Loria's particular theory of economic evolution itself. It is sufficient, therefore, simply to mention the conclusion—that industrial society, from slavery to the present capitalistic régime, is marked by the existence of a compulsory ethics, in which the natural egoism is kept in check or perverted by terror, religion and public opinion in turn ; but that in the industrial society of the future we shall have a system of free ethics, based on the beneficent workings of a spontaneous egoism.

More valuable, because more independent of any preconceived theory of economic progress, is the book which treats of the economic basis of law. Loria shows clearly that law is nothing but compulsory morality ; or, in other words, since morality is a reflex of economic life, that law is the sanction given by society to the economic conditions. More particularly, law as a coactive institution is the necessary product of a capitalistic society, *i.e.*, the material means by which private property is protected. Loria shows why the juridical sanction is always at first inadequate, and why all early legal systems are compelled to insist on rigid procedure and formality ; why, again, as in the middle ages, so in modern times, we have systematic violations of the legal sanction in the *Camorra* and *Mafia* of Italy and the lynch law of America. In concise but attractive chapters he traces the origin and growth of the Roman and Germanic law. He maintains that economic conditions are the only clue to the development of these systems as well as to the reception of the Roman law in the middle ages and to the recent vicissitudes

of legal conditions. He takes up, one by one, law, the law of succession, the law of contracts and servant and, finally, penal law, and content explanation is always to be found in economic energetically takes issue with Savigny and the who maintain that law is a product of consciousness. Given like economic conditions similar legal systems.

The third and chief book is entitled "The Economic Political Constitution." The author has ransacked every country and displays an intimate familiarity of the chief publicists and travellers. He shows that has always depended on the growth and form of and he brings out most clearly the struggles between (or the landed interest and the moneyed interest) and between these forces conjoined as against the on the other. Some of his ideas have become the last decade or two, as, *e.g.*, the economic basis of Roman development, of the French Revolution, and century struggles in English political life. But manipulations of well-known historical facts are ingenious to the highest degree. Thus, to speak only of mediæval European history, he finds an economic basis for the peoples, the crusades, the Reformation, the English and numberless other incidents which we have been to a variety of causes, religious, political and otherwise. Interesting is his history of constitutional development, and again democracy is often the mask for oligarchy, and constitutional differences of civilized countries may be their main outlines to economic causes.

Amid such a wealth of details it is but natural that should sometimes be carried away, and that in his analysis his main point he should occasionally make indefensible. It is not necessary to insist that everything is due directly to economic causes. Economists will indeed be the first to recognize the value of Loria's work, for it is their instinct to welcome what shows the importance of the study of the economic factor. But even economists must take exception to some of his conclusions. The weakest part of the book seems to me the chapter on social policy, where the growing demand for the income tax and progressive taxation is explained as due

the capitalists themselves. But here, as elsewhere (*c. g.*, his explanation of the historical development of taxation), the error lies not in advancing an economic basis for the phenomena, but in positing his peculiar theory of economic progress. Again, while his explanation of the contest between the moneyed and the landed interests is in the main true, the interpretation of contemporary Austrian and German politics is rather one-sided and not reconcilable with what he says in other passages. Finally, while most Americans will subscribe to much of what he says, as that our political parties have really represented varying economic interests, and that slavery was at bottom an economic question, they will be apt to disagree with some of his statements, as that the Northern capitalists in the fifties went over to Democracy because they had become the creditors of the slave-holders.

On the whole, however, we may affirm that the first thesis — the economic basis of the social constitution — has been adequately proven. But unfortunately all through the work we run up against the second thesis — the theory of economic development. This has been expounded by him in his large work, *The Analysis of Capitalistic Society*, and has been fully explained in the *POLITICAL SCIENCE QUARTERLY*, VII, 258. To sum it up: Originally the land was free and all the people free laborers. As the land became private property, capitalism developed. This means first slavery, then serfdom, then the wages system with wages at a minimum. In the meantime develops the antagonism of profit and rent. Things will go from bad to worse until the ultimate social peace will be found in the social state of the future, based again on free land. This is Loria's analysis. But neither his diagnosis nor his remedy has met with much approval; and to me the one seems as immature and unproven as the other is visionary. But this is not the place to attack his general theory. The book under review can stand without the acceptance of his theory of profits or his Utopia of free land. For the present purposes all that is necessary is to believe in economic evolution in the broad outlines that are accepted by all recent thinkers. Loria's signal contribution is to have traced the connection between this economic evolution and the broader social phenomena. This task he has accomplished with striking success.

Few readers will lay the book aside after having once begun it. And no one will leave the book without feeling that his horizon has been widened, that he has been stimulated in countless ways and that he must revise his opinions on many fundamental points of

that a reduction of the hours of labor will both increase wages and absorb into industries the great army of the unemployed. But while it is the opinion of Dalla Volta that no such absorption would take place, because of the industrial improvements that would follow, M. Boilley, speaking more especially of France, is inclined to think that the present amount of production could not be maintained for want of sufficient laborers.

Both authors are chiefly historical and inductive, and fail to find in experience any argument for a further reduction of the hours of the labor day. The important truth is recognized, and more particularly pointed out by Dalla Volta, that it is logically fallacious to argue from the effects of past to the effects of future reductions, since the argument assumes that industrial conditions remain the same, while it is a notorious fact that they have gone through immense transformations and are still constantly changing. It is freely granted that where hand labor still largely prevails in any industry the shortening of the labor day would have a temporary influence upon wages, and would decrease the number of the unemployed; but, in the end the introduction and improvement of machinery would offset these results, the reduction itself stimulating this industrial change. In its theoretical aspect, at least, the point might have been brought out more clearly by recurring to the law of diminishing returns in connection with the law of substitution. Boilley, on the other hand, shows the absurdity of making the labor day the same in all countries, since the industrial conditions are so different. But, though important, these are familiar facts.

The most characteristic difference between the two authors is in their treatment of the theory of compensation, or the intensity of labor—a difference due to different conceptions of the motives to human activity. To Boilley self-interest is the sole source of human activity. Reducing the hours of labor would involve no increased reward for greater effort on the part of the laborer; therefore, there would follow no greater intensity of labor. This narrow devotion to the principle of self-interest has blinded our French author to that broader comprehension of facts which characterizes the thought of the Italian. The latter views labor in its physiological and psychical aspects, and recognizes the relation between human activity and physiological and psychical exhaustion, the latter showing itself chiefly in relation to attention. Upon the whole, while the differences in the points made by the two authors are slight, Dalla Volta's treatment is broader and more philosophical.

Boilley's criticism of the socialistic argument statistics is especially sound ; and there contention that what the laborer wants is hours of labor but a larger money income, product ; that the real problem is, there equitable distribution of the profits. The *Profit Sharing* is an account of the different solution to the above problem. The systems in vogue are classified under nine different basis on which participation is effected : such as of service, merit and importance of position of these. The work is purely practical, and various systems for the special benefit of adopt profit sharing. The number of different systematic arrangements render the work well. A special study is given in Chapter V. "Accounts" — a most difficult and important. VIII contains a quite extensive bibliography of profit sharing.

M. Robert's "Introduction," of seventy-five pages, is a theoretical aspect of profit sharing. The system is a good business venture nor as creating any saving on the part of the laborer. It is, in fact, not at all a matter of philanthropy, but simply justice. That is, a share in profits is the common run by employees — risks of death, mutilation of which is the compensation to capital for its use is the *raison d'être* of profit sharing (page 14).

To criticise the theory here would be impossible. The nomenclature would first have to be settled. An important objection, however, M. Robert himself declares that to apportion profits exactly, according to classes of risks, is an insoluble problem. Between "human capital," between a thing and a person, and "human capital," no common term. The book rightly indicates the close relation between profit sharing and laying stress upon the distinctively human factor in industrial life. Certain it is that the labor problem is solved on the purely abstract principles of self-interest. Because human labor is not a commodity, ethical considerations must have their place.

recognized as, above all, a human and spiritual being; with a distinctive end of his own. Such recognition, in substance, M. Robert gives.

STEPHEN F. WESTON.

*Deutsche Wirtschaftsgeschichte.* Von KARL THEODOR VON INAMA-STERNEGG. Zweiter Band : 10. bis 12. Jahrhundert. Leipzig, Duncker & Humblot, 1891. — xii, 518 pp.

It is possible that some future historian of thought may assign to Dr. Inama-Sternegg's *Deutsche Wirtschaftsgeschichte* (appearing with its first volume in 1879, and now with its second) a position in the nineteenth century something like that of Montchrétien's *Traité de l'Économie Politique* in the seventeenth. The two books, widely as they differ in most other respects, have this in common : their titles alone, whatever may be the value of their contents, are important landmarks in science. They both indicate that the time had come for marking off a particular field of inquiry from the larger area in which it had before been included, and both set the example of staking out the lot. Dr. Inama-Sternegg's book, wherein almost for the first time economic history has made its appearance as a more or less independent study, is but a later stage in that process of specialization which earlier led to the rise of political economy.

It is interesting to watch a new study, a fresh academic discipline, coming into existence. It probably touches two or three already established studies ; and its first cultivators are commonly men who are already engaged in teaching one of these established studies, and who seem to themselves to be doing nothing but extending the area properly belonging to their own subject. And thus men meet together in a common interest who set out from very different starting-points, and realize with difficulty their new brotherhood. This is what is clearly taking place as to economic history. It is drawing students almost equally from the fields of "pure economics" and "pure history." We are yet in the midst of the process, and it would be unwise to predict the precise result ; at present the old "historical" or "economic" training, as the case may be, is still pretty easily discernible in each individual investigator ; but there are signs already of an identity of point of view, a community of purpose, which may in no long time do much to obliterate the marks of origin. To Dr. Inama-Sternegg not even Professor Menger would deny the name of economist. Among the most useful parts of his latest volume are those in which he shows how, during the period of

less there was a time, in the nomadic or tribal stage, when "the common freemen" were the most important part of the population. But Dr. Inama-Sternegg brings this condition of things well within historic times, and adopts without hesitation that particular view of it hallowed by the term *Markgenossenschaft* (see, e.g., page 222). No doubt when he began to write, about 1878, the mark theory was still in absolute possession of historical circles; and it is still vigorously defended. But its acceptance by our author has certainly rendered it harder for him to give a consistent impression of agrarian progress; at the very time when, as he points out again and again, the characteristic phenomenon was an elevation of the position of the serfs (e.g., page 199), he is still concerned to show the absorption of the "common freeman" (page 38 *seq.*), and the seizure of the *Allmend* (page 207 *seq.*). How strong such prepossessions are, may be shown by the fact that he confirms his statement as to the clearing of the new eastern provinces largely by "simple freemen" ("die Rodung des kleinen freien Mannes," page 7) by citing the grant in 1002 of an "estate" (*praedium*) with the wood adjoining 100 "mansi" to a *miles*; and the further fact that he cites an exchange by a "*nobilis miles*" of an "estate" (*praedium*) in Bavaria with two serf families on it for one in Carinthia with eight serf families, as an example of the voluntary migration of a *simple freeman* (pages 7, 8 and note 2 on page 8).

Now that we have fallen into a mood of adverse criticism, let us have done with the ungracious task as speedily as possible. The book is somewhat disconnected; topics are dealt with at disproportionate length; and there is often an undue air of certitude. Would that we already knew for certain anything like as much as our author seems to suppose! But all these defects cannot prevent our recognizing the work as one of signal importance. It is the first attempt to subject all sides of the economic activity of Germany to scholarly investigation, and to show their inter-relation. In this respect — as taking possession of and defining a territory to be subsequently worked over with more minute and piercing inquiry — he may be compared to his English contemporary, Dr. Cunningham. But, to change the metaphor slightly, if Dr. Cunningham, taking all English history for his province, has been more *extensive* in his methods, Dr. Inama-Sternegg, taking only the middle ages, has been more *intensive*; and on several corners of his smaller field he has done a good deal of the steady plough-drudgery of original investigation.

To the student of English economic history, probably for many years, be an indispensable co-preserve him from the fault which has detracted historical writing of the last fifty years—the pre-knowing little of the inner life of other countries and brightness of Parliament, imagines an English development different in kind, as well as in degree and period seen elsewhere. It is time that the “comparative” begin to be put to its true use.

*Military Government and Martial Law.* B. BIRKHIMER, LL.B., First Lieutenant and Adjutant Artillery. Washington, James J. Chapman, 1921 521 pp.

The terms martial law, military law and military government are employed to denote the three branches into which government, in the widest sense, may be divided. In the proper technical sense, is the system of rules and customs, to which those who compose the army are specially subject both in peace and in war. With respect to law the present work is not concerned. It treats of jurisdiction over the citizens or inhabitants of a territory in time of war or of civil commotion, the civil authority subordinate to the military. In this aspect it divides jurisdiction into two branches—military government and martial law. By military government is meant military jurisdiction exercised by the conqueror over territory of the enemy territory be actually foreign, or foreign in the sense of being inhabited by belligerents in rebellion against the title. By martial law is meant the exercise of military jurisdiction over territory of the state enforcing it.” The sense in which “loyal” is here used is not precisely defined by the author. In the light of the context it appears to be intended to signify those whose inhabitants have not formally assumed and are in a belligerent standing.

The enemy territory [he says] over which military government is exercised may be either without the territorial boundaries of the state, or comprise districts occupied by rebels treated as belligerents within those boundaries. . . . On the other hand, martial law is purely a domestic fact, being instituted only within the contemplation of law, and is friendly.



To the exercise by the president in time of war of the right to declare and enforce martial law, the author, so far as I am able to discover, sets no limit but the judgment and discretion of that official as to the necessities of the situation.

The safeguards [he says] against martial law are not found in the denial of its protection, but in the amenability of the president to impeachment, of military officers to the civil and criminal laws and to military law ; in the frequent changes of public officers, the dependence of the army upon the pleasure of Congress, and the good sense of the troops.

This responsibility, however, attaches to the abuse of the power, rather than to the exercise of it.

To the people of the United States, who live under a constitutional form of government, it is obvious that the question thus suggested is both first in order and first in importance in any discussion of the subject of martial law. If it be true that, the moment war breaks out, it is within the power of the president, guided by his judgment and discretion, to establish martial law anywhere within the United States and to subject all citizens to military authority, it follows that it is within the power of the president in time of war to suspend any and every provision of the Constitution. If such be the law, the "safeguards" suggested by the author against the abuse of this power must be regarded as practically ineffectual. It would afford but slight satisfaction to a peaceful citizen who, though far from the theatre of war, was locked up on suspicion or condemned by a military commission, to be told that his treatment might, perhaps, at some future time, be shown to have been unjustifiable.

Not only is this question not new in the United States, but, as one that has had an intensely practical aspect, it has been the subject of discussions both full and consummately able. The author very properly says : "It may be assumed without greatly erring that the power to suspend the privilege of the writ of *habeas corpus* and the power to declare martial law are not widely different." Hence in President Lincoln's proclamation of September 24, 1862, declaring martial law, the writ of *habeas corpus* was declared to be suspended in respect of all persons arrested or imprisoned by any military authority. I am not able to discover that the author has given the text of this proclamation, or a full summary of its contents, though (as on page 378) he refers to it. Nor, with one or two exceptions, does he seem to be familiar with the valuable constitutional literature of which it formed the subject. Without undertaking a bibliography

of this literature, I may refer to the papers of Bullitt, Ingersoll, Johnson and Jackson. The paper of Curtis on *Executive Power* is twice cited, but in the name is given as "R. B. Curtis."

The inversion of the initials of a name is not unusual, but in the present case it is merely an example of carelessness in the citation of authorities. As the book contains no index of cases or list of authorities, vague and insufficient citations at the foot of the page are specially onerous to the reader. On page 3, where the first citation of authority is given, "4 Cranch, 211; 4 Wheaton, 453; 9 Howard, 603," the cases referred to are not given, and if a figure is given, the reader would be helpless. On page 22 there is "Cobbett, p. 110 *et seq.*"; and on the same page "Steps Short of War," Cobbett, p. 95 *et seq.*" The work referred to is, doubtless, Cobbett's *Cases on International Law*. There is, at the page mentioned, a chapter entitled "War." Again and again we find merely nominal citations, "Maine," to "Bluntschli," and to other writers of the book and of books that have gone through more than one edition. We find many citations of "Manual." It is probable that the work referred to is the British *Manual of Military Law*, which is mentioned in his text, page 318. There is a citation of it at least as early as page 28, and there are others at pages 294, *etc.*

While I deem it to be my duty to advert to these defects, I must express my appreciation of the spirit in which the work was conceived, and of the purpose with which it was written. The author was brought to the consideration of the subject by the fact that he took the preparation of a treatise with a view to the discussion of questions which are involved in not a little uncertainty. The assumption of such a task, with such an object, is deserving of praise. In the present case the value of the result is lessened by a lack of method, order and precision, both in the arrangement of topics and in their discussion. For the author is sometimes difficult to follow up a subject and as to what conclusion has been reached in regard to it. Should he hereafter have occasion to revise his work, his efforts should be directed, at least in part, to the casting of his treatise in systematic form.

JOHN BAS

*Betterment, being the Law of Special Assessment for Benefit in America, with some Observations on its Adoption by the London County Council.* By ARTHUR A. BAUMANN, B.A. London, Edward Arnold, 1893. — viii, 110 pp.

This little book is divided into three parts, which are of a very unequal value. The first, relating to the law of betterments in America, is little more than a digest of the valuable work on taxation by Dr. Thomas M. Cooley (not Thomas W. Cooley, as the preface has it), with the addition of a few extracts from the municipal code of the city of New York, arranged in order to give a fair idea of the administrative machinery by which special assessments are imposed in that city. The author rightly criticises Judge Cooley for confusing special assessments and the English sewers rates, and points out the fact that the latter are really special taxes; but he himself, in a later portion of his work, falls into the same confusion. Upon one point he has entirely misunderstood Judge Cooley, and that is where he imagines that the judge condemns the practice of estimating the benefits accruing to each lot separately. What Judge Cooley really disapproves, and what is now quite generally held to be unconstitutional, is the practice of charging upon the abutting owner the cost of the particular improvement in front of his lot only, without reference to the benefits along the whole line of the work — in fact, without apportionment. From this misconception, Mr. Baumann has fallen into grievous error. He also fails to distinguish the safeguards thrown about the exercise of eminent domain in our commonwealths from the procedure required in levying special assessments. It is, in most cases, merely an accident that the proceedings for the two operations happen to be joined together.

The second part of the work is simply a statement of the efforts of the London county council to introduce the principle of betterment into London, and, inasmuch as it carries the movement down to the London Improvements Bill of 1893, it will prove valuable to those who may seek information on the subject.

In the third portion of Mr. Baumann's book, upon "The Place of Betterment in the General System of Taxation," he simply denies it any place whatever. To this result he has no doubt been led by his eagerness to combat the schemes of the London county council. He shows satisfactorily that special assessments do not conform to the principle of taxation as generally laid down, and comes abruptly

*and otherwise*, for the safe keeping and prompt return of the public money deposited with them. . . .

On page 86 Mr. Kinley says : "The banks were to be allowed to hold public money on providing security by the deposit of United States bonds, *or otherwise*." On page 236 he quotes the words expressly, "government bonds '*and otherwise*'"; but lower down on the same page he says :

The security required for deposits by the government is within the discretion of the Secretary of the Treasury. . . . The secretary could legally accept other security than United States bonds if he chose, but the custom thus far has been not to do so.

At the foot of this page he refers us to Appendix II, H, which is the law quoted above, being a part of section 5153, Revised Statutes.

If this citation were made for any less purpose than that of an authoritative precedent for the construction of a new system of national finance, it would not be serious. Obviously, the word "and" is not the equivalent of "or" in matters affecting hundreds of millions of dollars. The bill, as originally reported, did not contain the words "and otherwise." How they came to be inserted, the following colloquy, which took place in the House of Representatives, April 2, 1864, will show :

Mr. HOOPER. I move to amend the 45th section by inserting after the word "bonds," in the eleventh line, the words "and otherwise," so that the clause shall read : "And the Secretary of the Treasury may require of the associations thus designated satisfactory security by the deposit of United States bonds and otherwise for the safe keeping," *etc.*

Mr. HOLMAN. I would inquire of the gentleman what the effect of that amendment is. The security now required of these depositories is the bonds of the United States; the gentleman from Massachusetts proposes to insert the words "or otherwise" after the word "bonds," that is to say, the security shall either be bonds of the government or such other security as the Secretary of the Treasury may require. What other securities does the gentleman from Massachusetts refer to?

Mr. HOOPER. By the present arrangement, or rules of the department, the secretary requires a personal bond in addition to the deposit of United States stock, and it was to cover that point that I offered the amendment.

Mr. STEVENS. The words are "*and otherwise*," not "*or otherwise*."

The amendment was agreed to.

Mr. Kinley begins with a sketch of the second Bank of the United States. This is brief, and is not so good as a brief one ought to be.

Space does not permit us to go much into detail. If we should do so we should find more in Mr. Kinley's pages to praise than to blame ; for he has brought together a vast deal of information that is scattered through our financial archives and laws, and his conclusions from them, and his running comments, are generally sound. Yet his book, while a *vade mecum* for those who are familiar with the subject treated, is not a safe guide for the uninstructed. It is inordinately spun out. Mr. Kinley has not yet learned the art of condensation. His chapter on "Crises" is extremely nebulous. The book would be improved if this were omitted altogether.

My opinion is that Mr. Kinley's substitute for the Independent Treasury would be worse than the disease. Yet I agree with him that it is a disease, although just now dormant. It is dormant because the Treasury has at present no surplus to hoard, whereby it can draw money from business channels in a stream, to be discharged in a flood. Eventually, we shall have to deal with this evil sternly ; but we must remember that governments attend only to the pressing things, and this is not now pressing. It may be found, when the time comes for attending to it, that gauging the public receipts by the public expenditures, annually, will cure the greater part of the evil, besides curing the evil of profligacy which commonly attends a surplus. But there will still be a residue of temporary accumulation of money in the Treasury, which can only be prevented, as other governments prevent it, by depositing in banks.

HORACE WHITE.

all who threaten the herd with destruction, whether the protection is demanded on the land of their *habitat* or in the sea to which they resort temporarily for food. Against this line of argument the British counsel urged that the law of nations is in no sense identical with the law of nature, but consists merely of rules that have been formulated by the definite agreements of nations, and that no rule in relation to seals has been so formulated; that pelagic sealing is not shown by the evidence to be so destructive as is alleged; that the fur seal is clearly *fera natura*, and not distinguishable by its habits from many other species of migratory animals, in respect to which a claim of property rights by the owner of land to which they temporarily resort for breeding would be ridiculous; and finally, that the assertion of a right of the United States to exercise jurisdiction on the high seas beyond the three-mile limit over citizens of other nations violates one of the most clearly established principles of international law. On the question of regulations, the United States demanded such as should render pelagic hunting practically impossible; Great Britain, merely such as should keep the industry under a moderate degree of restriction. The decision of the court adopted the British view as to jurisdiction and in general the American view as to regulations. On the five questions as to jurisdiction, the judgment was (1) that Russia, having in 1821 claimed jurisdiction over Behring Sea for 100 miles from the coasts of her territory, abandoned that claim in treaties with the United States and Great Britain respectively in 1824 and 1825, and from that time up to the sale of Alaska to the United States never claimed or exercised jurisdiction beyond the ordinary limit; (2) that Great Britain did not recognize any claim of Russia to exclusive jurisdiction over the seal fisheries beyond the ordinary limit; (3) that Behring Sea was included in the term Pacific Ocean as used in the treaty of 1825; (4) that all rights of Russia in the seal fisheries in Alaskan waters passed to the United States by the treaty of cession in 1867; (5) that "the United States have no right to the protection of, or property in, the seals frequenting the islands of the United States in Behring Sea when the same are found outside the ordinary three-mile limit." On (3) and (4) the court was unanimous; on (1) and (2) Senator Morgan dissented; and on (5) the senator was joined in dissent by his colleague, Justice Harlan. The joint regulations for pelagic sealing agreed to by the court included the following: The absolute prohibition of the business within sixty miles of the Pribiloff Islands; a close season from May 1 to July 31 for the high sea north of 35° north latitude and east of the 180th meridian of longitude and the water boundary of Alaska as defined in the cession treaty; the prohibition of the use of any but sailing vessels in the business, each vessel to have a special license and to furnish its government with accurate records of its work; the prohibition of the use of nets, fire-arms or explosives in pelagic sealing, except shot-guns outside of Behring Sea. The court further recommended that the two governments undertake to stop sealing on both land and sea

that its purchase clause be immediately repealed. While still holding that tariff reform was imperatively demanded, the president considered that it should be postponed to action on the silver law. In Congress the silver men, without reference to party lines, took an attitude of energetic resistance to any project for unconditional repeal of the purchase clause. Conferences between the various factions led, however, to an arrangement in the House of Representatives by which the whole question should, after due debate, be determined by a direct vote. On August 11 a bill was introduced by Mr. Wilson, of West Virginia, repealing the purchase clause, but renewing the pledge to maintain the parity of gold and silver coin at the existing or some other ratio. At the same time an order of procedure was adopted, providing for a debate of fourteen days, to be followed immediately by voting, first on amendments establishing free coinage at the present ratio and at ratios running up to 20 to 1, then on the proposition to revive the Bland Act, and finally on the Wilson Bill itself. This program was carried out and the votes were taken August 28. All the amendments were rejected, those proposing free coinage by majorities ranging from 140 on the 17:1 ratio to 101 on the 20:1, and that reviving the Bland Act by a majority of 77. The bill was then passed by a vote of 240 to 110. In the Senate much more serious difficulty arose in seeking to carry out the policy recommended by President Cleveland. The Democratic majority were unable to agree upon a measure which should unite the silver and anti-silver factions. The former insisted upon opposing unconditional repeal of the Sherman Act's purchasing clause. After much caucusing, with unsatisfactory results, Senator Voorhees, chairman of the finance committee, at last introduced a repeal bill, August 18, with a "parity" pledge in more verbose form than that of the Wilson Bill, and with a recommendation of bimetallist policy for the government. The silver men immediately submitted a substitute proposing free coinage of silver at the ratio of 20:1, and on these propositions debate was opened. When the Wilson Bill came up from the House it became the formal subject of the discussion, but no agreement could be reached as to when a vote should be taken. Various plans were suggested for a compromise between unconditional repeal and free coinage, but the attitude of the administration was steadily hostile to any such idea. On the other hand, suggestions as to the introduction of some form of closure in the Senate met little favor. On October 11, when it had become pretty clear that there was a majority for unconditional repeal, Mr. Voorhees asked for a continuous session till a vote should be taken, but after a session of nearly forty hours, occupied by speeches by the silver men and calls of the house, a quorum could no longer be obtained and the Senate adjourned without voting. Attention now became concentrated exclusively upon the possibility of either compromise or closure. While propositions looking to the latter alternative were under serious and heated discussion, a scheme of compromise that proposed making the date of repeal twelve or eighteen months in the future and coining in the interval

### INTERNAL ADMINISTRATION.—The

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had failed to obtain certificates of registration, enjoined particular activity in the enforcement of those provisions which reenacted the old legislation. The federal judges generally found grounds on which to avoid applying the penalties for non-registration, and the net result of the act seems to have been the deportation of a single Chinaman in August from San Francisco. Some hundred or more who had been seized were held in prison pending their appeals to the Supreme Court on the question of their right to the *habeas corpus*. These were released upon the passage of the new act in November (see below, p. 776). — A decision made by the secretary of the interior, May 27, instituted an important **change in pension policy**. Under a ruling of the preceding administration disabilities under the Dependent Pension Act of 1890 had been assimilated in rating to like disabilities of service origin, so that any disability which, if of service origin, would have been rated at over \$12 per month, was rated at \$12, the maximum allowed by the act of 1890. In considering a case in which \$12 had been allowed under this act for "slight deafness," because \$15 was the minimum for such disability of service origin, the department declared the earlier ruling untenable. It was held that disabilities under the act of 1890 could not be treated like those of service origin, because an entirely different standard was introduced by that act. Disabilities of service origin were ratable by law regardless of the ability of the pensioners to work, while the act of 1890 referred only to such disability as "incapacitates them from the performance of manual labor in such a degree as to render them unable to earn a support," and directed that the rates should be proportioned between six and twelve dollars according to the degree of such disability. The decision then declared that the earlier ruling had superseded the law, and that the practice of disregarding in the ratings the degree of inability to perform manual labor was illegal. As a result of this decision, and stimulated by the discovery of considerable frauds by pension agents in several parts of the country, a thoroughgoing revision of the lists of pensions under the act of 1890 was inaugurated. It was announced that the maximum rate would not be allowed to any one who was able to do any manual labor, and notices were sent to pensioners whose records did not show *prima facie* evidence of total disability, suspending their pensions and giving them sixty days in which to bring the requisite proof, with the alternative of being dropped from the list. On the 6th of August the time within which proof could be presented was extended to October 10. By the end of August between seven and eight thousand pensions had been suspended, but on the 31st, on the ground that in some cases injustice had been done, Commissioner Lochren ordered a modification in the practice, so that suspensions should be made only on *prima facie* evidence that the pensioner is not entitled to any rating whatever. The policy of the office was changed in another particular by abolishing the practice of giving precedence in the adjudication of claims to those falling under the act of 1890. — **In the Indian Bureau** the contract for the purchase of the

Cherokee outlet was signed May 17, the price preparations for opening the territory to settle September 16, on which day, at noon, the thousands who had long been assembled along the border troops to enter the land. The rush for eligible exaggerated the scenes which have attended portions of Oklahoma territory. An import denoted by President Cleveland's appointment officers to fill vacancies as Indian agents.— **service**, the policy of the new administration distinguishable difference from that previously of changes in fourth-class post-offices, up to 11,100 in the corresponding four months of In the consular service, on the other hand been made at a more rapid rate than under The secretary of the treasury put in force, July defining a system of promotion in the department records of efficiency and on examinations, competitive. The pressure of office seekers too strong for his patience by May 7, and order setting forth with considerable distinction at the personal importunities of applicants with Congressmen, and declining for the future applicants save when he invited them of his **appointments to office** have been made: Persia, Alexander MacDonald, of Virginia; Georgia, of Georgia, and later A. S. Willis, of Kentucky; W. E. Quimby, of Michigan; to Bolivia, C. Italy, J. J. Van Alen, of Rhode Island. Edwin F. Uhl, of Michigan; First Assistant Secretary Jones, of Illinois; Assistant Attorney General, Associate Justice of the Supreme Court, W. (not yet confirmed). In response to the action raising the rank of their ministers at Washington, the president nominated our ministers ambassadors.

**CONGRESS.**—The extra session opened President Cleveland, August 7. The organization representatives (for the organization and committee RECORD, p. 378) was effected by the reelection and of the other Democratic caucus nominee speaker announced the committees, August 21 as chairmen of the most important: Wilson Means; Sayers of Texas, Appropriations; and Weights and Measures; McCreary of Kentucky.

son of Texas, Judiciary; Springer of Illinois, Banking and Currency. Most interest was excited by the assignment of Mr. Wilson to the head of the Ways and Means Committee, thus superseding Mr. Springer as leader of the majority, and by the retirement of Mr. Holman from his long service as senior Democratic member of the Appropriations Committee. The Rules of the House were adopted September 6. The only important questions in connection with the rules were, first, as to the quorum in committee of the whole, a proposition to make the number a hundred instead of a majority of the House being rejected; and, second, as to filibustering, where the matter was settled by giving the Committee on Rules full control in the matter, as in the last Congress, and further, authorizing the committee to sit while the House is in session. — **The work of the House**, outside of that touching the silver question, described above, included the repeal of the federal election laws, October 10, and the passage, October 16, of a new Chinese Exclusion Bill, defining more exactly the classes to which the last act applies, closing up some avenues of evasion that had been discovered, and extending for six months the period within which laborers may register and obtain certificates. The Ways and Means Committee began in August the preparation of a tariff bill. — **In the Senate**, little was done up to the close of this RECORD beyond the discussion of the silver question. A vote was secured on the status of the persons appointed senators by the governors of Montana and Washington, where the legislatures had failed to elect. On the ground that such failure did not create a vacancy within the meaning of the constitution, it was decided, August 28, by a vote of 32 to 29, that the governors' appointees were not entitled to seats. A bill to authorize national banks to issue notes up to the par value of government bonds deposited was discussed at length, but could not be brought to a vote. This bill was officially approved by Secretary Carlisle, as a safe method of relieving to some extent the financial stringency. The Chinese Exclusion Bill was passed in the form in which it came from the House, November 2. The extra session ended by adjournment on the 3d of November.

**THE FEDERAL JUDICIARY.** — In the Chinese Exclusion Law cases, May 15, the supreme court held: That the political department of the federal government has authority to expel aliens who have taken no steps to become citizens, even though they are subjects of a friendly power, and have acquired a domicile in this country; that Chinese laborers have no right to remain in this country, except by permission of Congress; that the provisions of the act of May 5, 1892, with reference to registration and deportation, do not contravene the constitutional requirements as to due process of law, trial by jury, and cruel and unusual punishments; and that an act of Congress prevails as against any earlier treaty in conflict with it. — On an application by the United States district attorney for an injunction to prevent the Columbian Exposition at Chicago from opening its gates on Sundays, because the act of Congress appropriating money to aid

to call in their clearing-house certificates, though the last of New York's great issue was not redeemed till November 1. Up to the close of this RECORD, however, there was no very pronounced reaction toward prosperity, the uncertainty in respect to silver and tariff legislation being alleged as reasons for the continuing distrust. A most striking characteristic of the panic in general has been the immunity of the great financial centres from overwhelming disasters. Only a single private banking firm of the first rank succumbed in New York City, and but one national bank. Of the 301 bank suspensions from May 1 to July 22, ninety-three per cent were in the Southern and Western states. Some idea as to the dimensions of the crisis may be obtained by the statistics of commercial and industrial failures as compiled by *Bradstreet's*. Failures, April 1 to July 1, 1893, 3,170, with liabilities of \$131,436,078; July 1 to October 1, 4,935, with liabilities of \$153,227,546. The corresponding figures for 1892 were: failures, April to July, 2,144; July to October, 2,027; with liabilities respectively of \$20,673,872 and \$20,436,250. Of bank suspensions the total for the year up to September 1 was 549, of which 151 were national banks. At least twenty per cent of the embarrassed institutions were able to resume business as the panic subsided. Three great railway systems were forced into the hands of receivers during the period under review—the Erie, July 25, the Northern Pacific, August 15, and the Union Pacific, October 13.

## 2. AFFAIRS OF THE STATES.

**ELECTIONS.**—The closeness of the results in **Rhode Island** in April and the constitutional provision requiring an absolute majority instead of a plurality to elect officers, led to a deadlock in the legislature in May. The Senate was Republican and the House Democratic. By the constitution the two houses were required to meet in grand committee to choose the governor and other state officers in case of a failure to elect in the popular vote. The Senate, objecting to steps taken by the House to insure a Democratic majority in the grand committee, refused to unite with the House for the elections. After a period of wrangling without result, the governor adjourned the legislature till January and continued in office for want of a successor. The only legislation effected was a joint resolution for submitting to popular vote an amendment to the state constitution making a plurality sufficient for a choice in all elections.

**VARIOUS LEGISLATION.**—On July 1, the Evans Law in reference to the sale of liquor went into effect in **South Carolina**. By its provisions, the liquor traffic became a state monopoly, and, under the supervision of state and county boards, dispensaries were established where alone liquor should be procurable. The law embodies regulations as to the quality of the liquor to be dealt in and the profit to be made on its sale, and prescribes severe penalties to insure that none but the official establishments shall carry on the business. There was much confusion at

first in getting the law into operation, and much passive part of the old licensed dealers, but Governor Tillman energy in its execution. Legal difficulties that arose were successfully met, though several sections of the law have been substituted by inferior state courts. In September, the law came into controversy with United States officers over a case brought into South Carolina in violation at once of the law. On this issue a case has been carried to the United States Court. — In **Kansas**, the superintendent of insurance passed the law with a very strict construction, the law recently passed by the legislature, which provided that no person, agent or corporation not resident in Kansas from property within the state. The reason for the law was that companies, in cases of disputed claims, were accustomed to sue in federal courts, and the intention was to force the companies to sue in state courts, so that the basis of the transfer of the trials would be in the state courts. A number of projects of socialistic character have been under favorable consideration by the Populist administration. These include, among others, an employment bureau under governmental control, and railway enterprises. The absence of legislative authority has prevented the realization of these plans, which are now being forwarded at the next session of the legislature. — The legislature in **Minnesota**, providing for a great grain elevator under governmental management, was rendered practically inoperative by the opinion of the state attorney-general in May, to the effect that the law for building the elevator must come out of the profits of the elevator. This interpretation of the law aroused much ill-feeling against the law. — The supreme court of **Michigan**, October 24, declared the law passed by the last legislature permitting women to vote in school elections. It was held that the constitution did not confer the right on women, and the legislature had no right to confer it.

**THE RACE PROBLEM.** — The relation of the race problem has been brought into prominence by an apparently steady increase in the number and the barbarity of lynching incidents. The problem is characterized by a perceptible increase of lawlessness in the South, due probably more or less to the financial crisis. These incidents were by no means confined to the South (a conspicuous case in Denver in July), but that section was responsible for the largest number of such incidents, and in almost all cases the victims were negroes. The offense in the majority of the cases was attempted or completed rape of a white woman. Statistics of cases reported in the new South show up to September 1 show a total for the country of 142, of whom 129 were lynched in the South, 110 of these being negroes. The first twenty days of September produced twenty-four lynchings in the South, only one victim being a white man. This is a section in which the authorities seem to have ad-

adequate measures to enforce the law occurred at Roanoke, Virginia, September 20. Here a mob, attempting to take from jail a negro who had assaulted and robbed a white woman, was dispersed by the militia after a fight in which eight persons were killed and over twenty wounded. On the following day, however, when the soldiers had disbanded, the negro was seized and hanged and his body burned, while the mayor and many militiamen were obliged to leave the place till the resentment of the populace had subsided.

**THE TRUSTS.**—The Whiskey Trust (Distilling and Cattle-Feeding Company) was greatly weakened by the withdrawal, May 20, of five of the most important concerns in the combination. It was said by officers of the withdrawing companies that one cause of their action was the anticipation that the legal proceedings against the trust under the federal law would prove successful.—The process of winding up the Standard Oil Trust on the plan agreed upon in March, 1892 (see this *QUARTERLY*, VII, 379), had resulted by September 13, 1893, in the retirement of \$60,295,000 of the trust certificates out of a total of \$97,250,000 outstanding at the time the process began.—The combination of window-glass manufacturers, after having shut down their works for four months in a struggle over wages with their organized employees, resolved, October 18, to abandon the struggle and give up the attempt to control either prices or wages by joint action.

**NECROLOGY.**—July 7, Samuel Blatchford, Associate Justice of the United States Supreme Court; September 7, Hamilton Fish, Secretary of State under President Grant.

## II. FOREIGN AFFAIRS.

**EUROPEAN INTERNATIONAL RELATIONS** — No incident of an especially striking character has appeared in this field. Probably of most real importance have been the further steps in the **adjustment of commercial relations**. Spain reached agreements in the middle of August with both Germany and Italy, though the treaties yet lack legislative sanction. Meanwhile, the last *modus vivendi* having expired June 30, her commerce with Germany has been on the basis of special arrangements of a provisional character. Russia concluded a treaty with France for mutual favors in the latter part of June, and opened negotiations with Austria-Hungary in the middle of August. The Russo-German negotiations, which have now been going on for over two years, were not near enough to a conclusion to prevent the outbreak in August of an obstinate tariff war between the two empires. At that time the state of the negotiations was substantially this: Russia had demanded reductions in rates on many of her imports into Germany, especially on grain. Germany's counter-demands had been to some extent conceded, and Russia asked in July for further negotiations by commissioners at Berlin, and meanwhile for a *modus vivendi* till the end of

expression which many interpreted as an acknowledgment of a formal alliance between the two governments. — On May 22, an agreement to restrict for the year 1893 sealing in the North Pacific was entered upon by Great Britain and Russia. The convention ran closely on the lines of the *modus vivendi* between Great Britain and the United States as to Behring Sea (*cf.* this QUARTERLY, VI, 763). — An International Socialist Congress met at Zürich, Switzerland, August 6, and remained in session till the 12th. Eighteen different nations were represented by about 400 delegates, of whom 92 were from Germany, 65 from England and 38 from France. After a stormy debate as to whether Anarchists were entitled to sit as delegates, it was resolved that only those should be admitted who approved the promotion of their ends through the exercise of political rights and the machinery of legislation. A proposition recommending, in case of war, a general strike and refusal to do military service was voted down, and instead it was resolved that every effort should be made to spread socialistic ideas among the soldiers. The eight-hour day was approved, and it was declared the duty of every workingman to devote the first of May in each year to agitation for this end. Other resolutions called for better protection and better pay for women-workers, prohibition of night labor, *etc.* The resolution on "tactics" called for the organization of laborers everywhere for the war against the exploiting capitalists, and the employment of political rights for getting possession of political power, while the detailed methods of pursuing these ends should be adapted to the varying circumstances of different lands, always provided that no compromise should be recognized which looked to anything less than a complete social, economic and political revolution.

**GREAT BRITAIN AND IRELAND.** — The topic of all-absorbing political interest in this kingdom has been the course of the **Home Rule Bill in Parliament**. Against a resolute opposition, maintained without flagging throughout the summer by means of every possible form of parliamentary tactics, Mr. Gladstone succeeded in securing the passage of the bill in the House of Commons just as the summer ended, only to see it thrown out by the Lords a week later. The important points in the chronology of the great struggle are as follows: First sitting of the committee of the whole, May 8; after twenty-eight sittings devoted to four clauses (out of the forty clauses and seven schedules of the bill), the government carries an order fixing the times at which votes shall be taken on the remaining clauses, June 30; final votes in committee under this order, July 27; final votes on the report to the House, under a special closure order, August 25; vote on the third reading, September 1; vote on the second reading in the House of Lords, September 8. The government's majorities in committee tended generally downward from the forty-three secured on the second reading until the normal figure became about thirty. On the clause providing for a second chamber in the legislative body a number of Radicals joined the opposition

and the government's majority was reduced to fifteen, while amendment making the Irish representation at Westminster the present was rejected by only fourteen votes. On the third reading it stood 301 to 267, a majority of thirty-four. In the House of Commons the Unionists adopted the policy of making the rejection of the bill as to render ludicrous the idea of its passage by the creation of a new majority. The vote stood 419 to 41. This total of 460 is the largest recorded in the Lords, the next largest, 375, having been that of the Corn Laws in 1846. The most important modifications made during its discussion were those in respect to the financial representation of the Irish at Westminster. On the latter point Mr. Gladstone announced, July 12, that in deference to what he believed to be the prevalent opinion in the House, he had decided to move the amendments which prohibited the Irish members to vote on clauses directly affecting Ireland. The eighty Irish members were on the same footing as the present members at Westminster. On the financial clauses, the Nationalists succeeded in convincing Mr. Gladstone to alter the original arrangement the new Irish government would be at the outset with a deficit. Accordingly he announced, July 12, a scheme, providing that for six years the existing system of the taxation should continue, one-third of Ireland's gross revenue to be paid to the imperial exchequer. The Irish legislative body in the meantime to be authorized to establish new taxes, and at the end of that period a permanent arrangement should be made fixing the Irish representation and giving to the legislative body the control of all taxes and excises. This new arrangement was carried, despite the opposition of the Parnellites to any prolongation of British control over Irish administration. The parliamentary tactics of the opposition were early construed by the government as obstruction pure and from the outset the closure was freely resorted to. Even so, however, progress was very slow and the consequence was a "guillotine" order of June 30. Under the operation of this the opposition persisted in its policy of critical discussion, though it was not taken on groups of clauses when many of them had not been considered. The opposition made much of the fact that a considerable part of the bill had thus been adopted without adequate examination. A complaint was made on both sides as to the lack of fitness in the selection of the committee for his task. Partly as a consequence of the conviction on this point and partly from the tension of spirits so prolonged and violent a struggle, the hour of the final vote was signalized by a free fight among members, especially the Nationalists and Conservatives, on the floor of the House—an incident said to be without precedent in the history of the Commons. Upon the rejection of the Rule Bill by the upper house, the Unionists called loudly for the dissolution of Parliament and appeal to the electors, but Mr.



announced that the government's program would be to pass some of the measures which had gone through the first stages in the spring, before taking further steps in the home-rule matter. Accordingly, after routine business Parliament adjourned, September 22, to meet again in November, with the understanding that the Parish Councils and the Employers' Liability Bills would be considered first. Meanwhile the Liberals have tended to concentrate their attention on the position of the House of Lords as the main issue now before the country and thus to strengthen their following among the Radicals. In a public address at Edinburgh, September 27, Mr. Gladstone made a vigorous attack on the conduct of the Lords, and pointed out the danger they incurred by opposing their irresponsible will to the will of the responsible representatives of the people in the Commons. The Unionists maintain that Mr. Gladstone's majority in the last election was secured on other issues than home rule; that the smallness of the majority indicates that the real sentiment of the electors on the subject is against the measure; that a decisive expression of opinion on the single issue is essential in so important a matter; and that the Lords are, therefore, wholly within the spirit of the constitution in interposing to force a dissolution on that issue. Mr. Redmond, leader of the Parnellite faction of the Irish Nationalists, announced in October that since Mr. Gladstone refused to introduce a bill for the relief of evicted tenants, he and his followers would not support the government in its English business in the approaching session, but would abstain from attendance. Mr. Gladstone's offer to take up the matter of the evicted tenants if the opposition would agree to regard it as non-contentious, was declined by Mr. Balfour. — Parliament reassembled November 2, and proceeded immediately to the consideration of the Parish Councils Bill, on a motion for its second reading. — An extensive **strike of coal-miners** in England and Wales began July 28. The cause was a proposition by the employers for a reduction of wages, on the ground of a great fall in the price of coal. The reduction was resisted by the workmens' organization, which declined a proposition for arbitration, claiming that the existing rate was the lowest at which the miners could live. Over 300,000 men went on strike, affecting practically all the mines in Yorkshire, Lancashire and Wales, but not those in Durham and Northumberland. The diminution in the coal supply interfered very seriously with manufacturing and with the operation of the railways. Late in August the threatening movements of the strikers led to the calling out of considerable bodies of troops in Wales, and during the first half of September serious and destructive riots occurred in the English mining regions, necessitating active military interference. At Featherstone, in Yorkshire, a number of strikers were shot in a conflict with the troops, September 7. By the end of September the suffering among the strikers' families, despite the funds contributed by the Radicals and the philanthropic, became intense, and resumption of work by those who had struck only through sympathy grew common, the Miners' Federa-

tion authorizing this in case the old wages were granted. Negotiations with the mine-owners' association for a reduction were, however, still declined, though the amount of the reduction insisted upon was considerably decreased.

**THE BRITISH COLONIES.**—The political situation in **Canada** has been characterized by unbroken calm. The Earl of Aberdeen was appointed governor-general in May, to succeed the Earl of Derby, who retired at the death of his father. The Manitoba school question, one legal aspect of which was settled by a judgment of the British Privy Council more than a year ago (see this RECORD for December, 1892, p. 777), has now been brought before the Supreme Court of the Dominion on another issue. The Catholics have appealed to the Dominion cabinet for remedial action, under a clause of the British North America Act which authorizes such an appeal against an act of a provincial authority that affects "any right or privilege of the Protestant or Roman Catholic minority . . . in relation to education." The cabinet resolved, before taking definite action, to submit to the supreme court the question whether, under the circumstances of this special case, the government had a constitutional right to interfere, and this question is now before the court. Sir John Abbott, late premier of the Dominion, died October 30.—The financial crisis in **Australia** was at its height at the opening of the period under review, and the first half of May was a time of utter panic. The great banks of the colonies closed their doors in rapid succession till only three institutions of any importance remained. In Victoria, where the trouble was most acute, the government sought to stay the panic by declaring a bank holiday, May 2-6, but the action had no perceptible good effect. The worst was over by the first of June, and steps were soon taken to reorganize the defunct institutions. In most cases the assets were found sufficient to satisfy depositors eventually in full. As a result of the crisis, the legislature of New South Wales passed a law making notes issued by the banks a first charge on their capital and reserve, and authorizing the government in cases of emergency to make such notes temporarily legal tender. The confederation project has been clarified, first, by the definite refusal of New Zealand to participate in the union, and second, by the government's announcement in New South Wales that a bill to carry out the plan formulated in 1891 will be introduced during the current session of the legislature. The legislature of New Zealand, after a long struggle, has passed a law granting full political rights to women, whether of European or Maori blood.—An event of momentous importance both to the British Empire and to the civilized world in general was the inauguration of **currency reform in India**, June 26, by the order closing the mints to the free coinage of silver. The effects of the depreciation of silver have for several years been felt severely in India (*cf.* this RECORD for June, 1892, p. 388). In the summer of 1892 the Indian government made a definite proposal to the home government that steps should be taken toward a gold standard for India. A committee was there-

upon appointed, with Lord Herschell as chairman, to report to the London authorities upon the plan of the Indian government. The committee's report was submitted last June, endorsing the plan with some modifications, and upon the acceptance of the changes, the Indian government was authorized to publish the order which appeared on the 26th. The principal features of the plan are these: (1) The closing of the mints to free coinage of silver; (2) the retention of the power to coin silver for government account; (3) the assumption of the power by the government to declare that gold coin which is legal tender in England shall be legal tender in India at a rate of not less than  $13\frac{1}{2}$  rupees for one sovereign; (4) the acceptance of gold at the mints and of sovereigns in payment of public dues at the rate, till further notice, of 16*d.* per rupee. The purpose of closing the mints to silver was declared to be, not so much to raise the gold value of the rupee, as to prevent a further fall in this value. Some perplexity in financial circles was caused during the summer by the uncertainty as to whether the rate of 16*d.* per rupee was to be regarded as absolutely the lowest which the government would recognize. In fact, Council bills were sold at a lower rate, and it was officially declared that 16*d.* was a provisional rate, adopted merely as a price which the government considered it possible, by closing the mints, to maintain. The uncertainty as to what the official rate would ultimately be had a disastrous effect on business and exchange in which India was concerned. — A serious conflict between Hindoos and Mohammedans in Bombay, beginning August 16, was only quelled when considerable bodies of troops had been brought into the city. The cause of the conflict was the perennial religious antipathy of the races, aroused in this case by Hindoo dislike of the killing of cows in the Mohammedan rites. The affair at Bombay was only an unusually conspicuous instance of manifestations that are very common in the rural districts, and that result from the activity of a widespread Hindoo society for the protection of cows. — Sir Henry Norman was appointed in September to succeed Lord Lansdowne as viceroy of India at the expiration of the latter's term with the current year. After accepting, the new appointee withdrew his acceptance, and in October the Earl of Elgin was appointed to the position.

**FRANCE** — The later phases of the Panama scandal proved as insignificant as the earlier were portentous. On the 15th of June the Court of Cassation quashed the sentences of those who had been convicted of fraud in the management of the company, on the ground that the statute of limitations applied, and the prisoners were released. Of the three convicted of bribery and corruption, two have been set free. The report of the investigating committee appointed by the Chamber was not made public till the middle of June. In the evidence presented was revealed ample proof of the devious methods employed to sustain the bankrupt enterprise, but the committee's conclusions, exculpating the deputies, threw all responsibility for the affair on the directors of the company and the

press. — A Paris newspaper's attempt to raise a new scandal by means of documents alleged to have been stolen from the British embassy, showing large money payments by the British government to leading Radical politicians, was taken up by certain Revisionist deputies in the Chamber, June 22, but was quickly thwarted by proof that the documents were forgeries. — The attention of the Chambers, which continued in session till July 21, was taken up with the budget and other routine business. In view of the dissolution, a resolution was adopted to the effect that bills that had passed the Chamber prior to a dissolution might be sent to the Senate by the new Chamber on the desire of forty members. — During July the Dupuy ministry was able, in connection with two important incidents, to create an impression of greater strength than had hitherto been ascribed to it. The first of these was the **students' and laborers' riots** in Paris. Owing to the interference of the police with a students' procession, disorder arose in the Latin Quarter on the 1st of July, and for several nights conflicts between the students and the police were frequent and serious. Gradually the turbulent element from other quarters joined in the fighting and the students, perceiving this, withdrew. Discontented workmen and socialist agitators sought to propagate the disturbance for ulterior ends, and the night fighting became more desperate. Troops were hurried into Paris from the suburbs and stationed in the disaffected regions, and with their support the police succeeded after a week in restoring order. In the very midst of the trouble the government took the offensive by closing up the labor exchange, a workingmen's headquarters. In the attacks on the government's policy by the Socialists in the Chamber, the ministry was sustained by large votes. When the rioting was over, the ministry withdrew from the extreme positions it had taken, conceded the demand of the students for the dismissal of the prefect of police and permitted the labor exchange to reopen. This action was attributed to considerations based on the approach of the elections. — The second occasion for a show of strength was in the **acquisition of territory from Siam**. Conflicting claims as to a strip on the borders of the French dependency of Anam caused collisions in the early summer between French and Siamese frontier troops on the Mekong River. On the 13th of July two French gunboats, when making their way to the Siamese capital, Bangkok, were fired upon by the forts that defended the city, but after a brief combat proceeded to their destination. This affair resulted from the failure of the ships' commanders to receive dispatches countermanding the orders to proceed to Bangkok. The French foreign minister, M. Develle, nevertheless held that the Siamese were at fault in the attack, and on the 20th sent an ultimatum to Siam demanding immediate recognition of the French territorial claims on the left bank of the Mekong, full satisfaction for the attack on the gunboats and an indemnity for the victims of this and other collisions between the forces of the two powers. Siam's reply, on the 22d, conceded the demands, but with such a construc-

tion of an indefinite expression in the ultimatum as to cede only about half the territory that France expected. Considering the answer unsatisfactory, M. Develle directed the minister at Bangkok to leave the city, and on the 25th diplomatic relations were suspended. A large naval force that had assembled on the coast prepared to enforce a blockade, of which notification was given. It is understood that Great Britain, which had previously refused applications of Siam for support, now protested earnestly against a blockade without a declaration of war, and declined to recognize it as to her own vessels, in which nine-tenths of Siam's trade is carried on. Tension on this point was averted, however, by the complete surrender on the part of Siam, whose government on the 28th acceded without reservation to the terms of the ultimatum, and later to slight additional demands that were made. The resumption of diplomatic relations at Bangkok shortly afterwards terminated the incident. The net result was an important increase of French territory, and the recognition of the Mekong as the boundary between French Anam and Siam, from the frontier of Cambodia northward to a point to be settled by negotiation with the British government, whose Burmese interests are here involved. The territorial gain was hailed with much enthusiasm by all parties in France, and the popularity of the ministry increased correspondingly. — **The elections** were held August 20, with second balloting September 3. The pope took occasion just before the voting once more to impress upon his spiritual flock the importance of abandoning the Royalist cause. His efforts probably contributed to one of the most striking features of the result — the great losses of the old Monarchic party. Including the Bonapartists, this group can number not more than 60 votes. The Rallied (Catholic Republicans) number about 30. Less than a half-dozen of the Boulangist faction (Revisionists) were elected, and they are merged practically in the Radical-Socialist group. This party numbers something less than 200. The government Republicans number about 290. As between the extreme Right and the extreme Left in combination against the government, it seems probable that the Rallied will hold the balance of power. Among the conspicuous former members who failed of reelection were Floquet and Clémenceau, of the Radicals, Déroulède and Millevoye, Revisionists, Cassagnac, Bonapartist, and the Comte de Mun, leader of the Rallied. The defeat of Clémenceau excited the greatest interest. He will be succeeded as Radical leader by M. Goblet. — **Died:** October 17, Ex-President Marshal MacMahon; November 4, Pierre Emanuel Tirard, formerly prime minister.

**GERMANY.** — **The struggle over the Army Bill**, which was at its height in the Reichstag at the opening of this RECORD, resulted in the rejection of the bill, May 6, by a vote of 210 to 162. Chancellor von Caprivi immediately announced the dissolution of the Reichstag, and new elections were set for June 15. The conflict in the house had proved very demoralizing to several of the party factions, and the failure of the bill was speedily followed by disintegration of the Radicals and the Centrists. In

each of these groups an influential element had favored a compromise measure which the government had indicated a willingness to accept, but the leaders insisted on opposing and rejecting the bill. As a result, nearly half of the Radicals and a smaller proportion of the Centrists withdrew from the respective parties. The line of cleavage in the Radicals was practically that between the groups which united to form Richter's party in 1884 ; in the Center the secessionists were chiefly of the conservative element, which has for some time been discontented with the democratic tendencies of the leader, Dr. Lieber. These party dissensions, together with the uncertainty as to the importance of the Anti-Semitic and Agrarian influence among the Conservatives, made the electoral campaign extraordinarily complex. Second balloting, which took place June 24, had to be held in 178 of the 397 districts, and the fate of the government's bill could not be clearly foreseen till the last returns were in. It then appeared that a small majority could be expected for the measure. The most striking features of the result were great gains by the Social Democrats and the Anti-Semites, considerable losses by the Centrists, and the reduction of the Radicals to insignificance. The following gives for the new Reichstag the strength of the leading groups, including the members temporarily attached (*Hospitanten*), with the gain or loss as compared with the situation before the dissolution : Conservatives 68, loss 2 ; Imperialists 27, gain 9 ; National Liberals 52, gain 10 ; Centrists 99, loss 10 ; Social Democrats 43, gain 7 ; Richter Radicals 22, Radical Unionists 13, the total for the two divisions showing a loss of 32 as compared with the old Radical group ; Anti-Semites 16, gain 11. In round numbers the Social Democrats polled 1,700,000 votes, a gain of 350,000 over 1890, and the Anti-Semites 260,000 votes, a gain of 200,000 over 1890. The agitator Ahlwardt was elected in two constituencies. — The new Reichstag met July 4, and the chancellor shortly after introduced the Army Bill in the compromise form known as the Huene Bill. This proposed an increase of force somewhat less in extent than that in the original bill, and embodied other modifications tending to conciliate the Radicals. On the 15th a vote was reached and the bill was passed by 211 to 185, the Conservatives, National Liberals, Radical Unionists, most of the Poles and a few Centrists supporting, while the bulk of the Centrists, the Richter Radicals and the Social Democrats opposed the measure. The Reichstag was then prorogued, with the understanding that the financial bills necessary to carry out the military reforms would be introduced in the fall. Chancellor von Caprivi officially declared, just before the close of the debate on the Army Bill, that the government had no intention of proposing additional taxes on beer, brandy, or food. Since the 8th of August, when the finance ministers of all the states in the empire met in conference at Frankfurt, work has been incessant on the revenue bills that are to be brought in. Dr. Miquel, the Prussian minister, has taken the lead in the business. It is understood that the scheme finally agreed upon

at the end of October involves new imposts on wine and tobacco, with an increase of that on bourse transactions. — The lower house of the **Prussian Landtag** accepted, July 3, the amendments made by the upper house in the last of the long-debated **tax-reform bills**, and the new system passed into law. The **Landtag** was prorogued July 5. The term of the lower house having expired, elections were appointed for the first week of November. — A very widespread interest was excited in September by the prospect of a reconciliation between **Bismarck and the Emperor**. The prince having passed through a serious attack of illness at Kissingen early in September, the emperor, on the 19th, sent him a cordial message of congratulation on his convalescence, and offered him the use of one of the royal castles for the winter, that he might avoid the unfavorable climate of Friedrichsruh. Bismarck returned his thanks, but declined the offer on the ground that his accustomed surroundings would, in the opinion of both himself and his physician, be the most likely means of promoting his recovery. With this exchange of despatches the incident closed, to the general regret of the German press and public. — The death of Duke Ernest of Saxe-Coburg-Gotha, August 23, brought to the throne as his successor his nephew, the Duke of Edinburgh, Queen Victoria's second son.

**AUSTRIA-HUNGARY.** — The **Culturkampf** in Hungary has continued to occupy public attention throughout the period under review, though the bills embodying the government's policy have not yet been formally considered in the parliament. The bill for establishing freedom of worship for all religious denominations was introduced in the lower house May 17. At the same time the upper house took advantage of the budget debate to vote formal disapproval of the government's policy. The hostility of the Catholic clergy to the proposed measures was manifested in many sporadic outbursts, but the pope's encyclical to the Hungarian bishops at the end of August was unexpectedly mild in tone, and counseled reliance on the king rather than active interference in politics as the true line of deliverance. On September 30, shortly after the opening of the fall session of the parliament, Minister President Wekerle announced that the government's civil marriage bill had been submitted to the crown, whose approval it was hoped would, after the proper examination, be secured. A vigorous attempt of the Apponyi Nationalists to overthrow the ministry was defeated by a good majority, October 10. — The assembling of the Reichsrath, October 10, was followed shortly by the **fall of the Taaffe ministry**. At the outset the government produced a great sensation by the introduction of a bill for the extension of the suffrage. This measure had been prepared by the government without the usual consultation of the party leaders. It gave the franchise to all men who could read and write, and to illiterates who paid any direct taxes or who had performed their military service with special credit. Under the terms of the project the electors would be 44 per cent of the male population instead of 15 per cent as before.

It was supposed that the government's proposition was influenced more or less by a very energetic agitation for universal suffrage that the Socialists carried on during the summer in the Austrian cities. The bill called forth bitter opposition in the Reichsrath, the German-Liberal group considering that its aim was to weaken their representation and increase that of the radical groups in sympathy with the Young Czechs. Count Taaffe was obliged within two weeks to give up hopes of getting a majority for the measure. A vigorous attack on his policy in employing martial law at Prague also weakened his position. The German-Liberal, Polish and Conservative groups formed a coalition for general opposition, and on October 30, Count Taaffe resigned. Prince Windischgrätz was called upon to form a ministry representing the coalition. By November 5 he had apparently succeeded, though it was freely predicted that the ill-assorted cabinet was destined to a short and troubled existence. — An outbreak of unusually violent demonstrations at Prague by the Young Czechs was followed by an ordinance, September 13, suspending till further notice the rights of association and reunion, the freedom of speech and of the press, and jury trial in connection with a number of specified crimes. Vigorous action was then taken by the authorities, by suppressing papers, dissolving societies and making domiciliary visits, to put an end to the agitation. — The resumption of gold payments which the government had hoped to effect by November 1, was postponed with the hope that it might take place by the beginning of the new year.

**ITALY.** — A slight cabinet crisis was precipitated, May 19, by the rejection of the budget on the final vote in the Chamber. The adverse vote, 138 to 133, was quite unexpected and was attributed to the dissatisfaction of a number of deputies with the minister of justice. After a reorganization of the ministry, excluding this member and one other, Signor Giolitti secured an overwhelming vote of confidence, May 26, on a declaration that he would stand by his old program. The new members strengthened the cabinet with the Senate and facilitated the passage of the Pension Bill which was in some doubt before. The most important legislation completed was the reorganisation of the banks of issue. This measure, after long discussion, was passed by large majorities in the Chamber of Deputies July 8, and in the Senate August 9. The law consolidates the joint-stock banks into a single institution, the *Banca d'Italia*, on which, together with the banks of Naples and Sicily, the right of issuing notes is conferred for twenty years. It is then provided that the present circulation shall be contracted, the metallic reserve increased, and the fixed assets be gradually converted into more quickly available form. Limits are set to the circulation and the reserves, and provisions in great detail are made for governmental supervision. The law also provides for the liquidation of the *Banca Romana*, whose failure was the cause of the scandal mentioned in the last RECORD. The criminal proceedings against those concerned in the latter affair have not yet been concluded. — In a



speech at Dronero, October 18, Premier Giolitti dwelt especially on Italy's financial difficulties, and announced as his program, generally economy, together with progressive income and inheritance taxes and the requirement that import duties be paid in coin.—A very serious dearth of small change in Italy led the government to apply to the Latin Coinage Union for the withdrawal of her lesser coins from the terms of the Union. At a meeting of the representatives of the different governments concerned at Paris, in the middle of October, the desired steps were taken. The other governments agreed to withdraw from circulation and on demand return to Italy her share of the small coins of the Union, on condition that she should pay for them in gold and then issue for her own use a paper currency corresponding in amount to the sums withdrawn.

**SPAIN.**—*Señor Sagasta's government* has had by no means an easy pathway during the last six months. In parliament it had to deal, in the middle of May, with a policy of obstruction by the Republican deputies that was quite unprecedented in Spain, though familiar elsewhere. A bill to postpone certain municipal elections, on the ground that the Republicans had made preparations which included great frauds in registration, was so stoutly opposed by filibustering tactics, that a continuous session of fifty-four hours, with some sharp practice at the end, was necessary to secure the final vote. In the budget debates, also, the government's progress was so slow that the project was not adopted till about the first of August—a month after it should have gone into effect. The fiscal scheme of the government involved very considerable economies in most of the executive departments, and at the same time a number of new taxes. A contribution to the means of avoiding the perennial deficit was made by the queen-regent through the voluntary sacrifice of a million pesetas of her civil list. The enforcement of the new taxes was not well received by the people, and during August and September many disturbances were reported from the different provinces, in which resistance to the tax-collectors was a leading feature. At San Sebastian, the royal summer residence, a mob that proclaimed its purpose to slay Sagasta and then the king was only subdued by the military after many lives were lost. Republican and socialistic influences were obviously at work to a greater or less extent in all these disorders.—The activity of the *Anarchists* has manifested itself in a number of startling incidents. On the night of June 20 a dynamite bomb was exploded at the residence of the Conservative leader, Canovas del Castillo, and the perpetrators of the outrage were discovered to be members of a band of Anarchists. Even more sensational was the throwing of two bombs at General Martinez de Campos while he was reviewing the troops at Barcelona, September 23. The general's horse was killed and he himself slightly wounded, while a soldier was killed and several soldiers and staff officers severely wounded. A bomb factory in Barcelona was discovered by the police in investigating this affair.

**RUSSIA.**—A double-tariff system was announced June 25, to go into effect August 1. The existing duties constituted the minimum rates, while the maximum schedule was constructed by the addition of thirty and twenty per cent respectively to the duties on specified commodities. The reason for adopting the new system was declared to be the desire to counterbalance the disadvantage to which Russian agricultural export products were put by the differential rates adopted by the western states of Europe. The finance minister, in conjunction with the minister of foreign affairs, was authorized by imperial decree of July 30 to parallel by ordinance any increase in duties on Russian products by a foreign government. Thus the foundation was laid for the tariff war with Germany.—The Czar officiated in August at the laying of the cornerstone of a great naval harbor at Libau, where the Baltic fleet will be released from the ice blockade much earlier in the spring than has hitherto been the case.

**MINOR EUROPEAN STATES.**—The work of the Chambers in the revision of the Belgian constitution was completed September 2, and on the 9th the new articles went into force. The only serious difficulty that arose during the summer discussions was in reference to the constitution of the Senate and the qualifications of Senators. When it had been agreed that the Senate should consist of 75 members chosen by the electors of the Deputies, and 26 chosen by the provincial councils, the two houses came to a deadlock in the middle of August on the question of eligibility. A ministerial crisis was imminent and the whole work of revision was threatened with failure, when at last, on the 31st, the necessary two-thirds vote of the Chamber was secured for a project involving some slight concession to the more democratic spirit. According to this, the Senators chosen by the electors at large must be forty years of age and must either pay 1200 fr. direct taxes or have an income from real estate of 12,000 fr. (provided the number thus qualified equals one to every 5000 inhabitants); those chosen by the provincial councils are free from all such conditions.—**The Norwegian Radicals** did not persist in their resolution to abstain from legislative activity in consequence of the appointment of a Conservative ministry, as noted in the last RECORD. M. Stang organized a cabinet and proceeded with the administration and the Storting resumed its sittings. The session, which lasted till July 22, was characterized by a series of decisive measures in the line of the Radicals' aims. A bill was passed directing the removal of the union symbol from the Norwegian merchant flag; a resolution was adopted notifying Sweden that the common consular service would be terminated January 1, 1895; and, as a response to supposed threats of Sweden, the purchase of arms for certain private military companies was authorized. None of these measures received the royal assent, the prime minister frankly assuring the Storting that the ministers had advised the veto. In the budget the Radical majority manifested their feeling rather more effectively by cutting down the king's civil list by nearly a third, reducing diplomatic appropriations, and making

the consular appropriation conditional on the notification to Sweden of the termination of the common service. The ministry resolved to regard the condition as vitiating the consular grant and so to act as if the appropriation had not been made; but the king accepted the reduction of the civil list. — The elections in *Serbia*, following the King's *coup d'état*, resulted in the return to the Skupschtina of 122 Radicals out of 134 members. At the opening of the session, June 16, King Alexander took the royal oath with due ceremony, and in his address from the throne justified his *coup d'état* by a denunciation of the Liberal government which he overthrew. The Radicals, being practically unopposed in the legislature, voted the impeachment of the members of the preceding (Avakumovitch) ministry on various charges of malfeasance, August 16, and a special tribunal of state councilors and judges of appeal was constituted for the trial. The Skupschtina adjourned August 21. In the latter part of October the king rather theatrically proclaimed his reconciliation with the Liberal Party, and announced his conviction that the bad government of the past was due rather to the regents than to the Liberal ministry. About the same time Premier Dokitch resigned on the plea of ill-health. — The amendment of the constitution in *Bulgaria* was completed by the Great Sobranje, which met May 15 and promptly ratified the work of the legislature as described in the last RECORD. The elections for the legislature under the new system were held July 30 and resulted in the return of government supporters in all but nine districts. The new Sobranje assembled October 27. — The hard conditions which had to be complied with in floating a loan in London led to a *ministerial crisis in Greece* in May, in consequence of which Tricoupis was succeeded as premier by Sotiropoulos, with colleagues drawn mostly from the "third party" which stands apart from those led respectively by Tricoupis and Delyannis.

**AFRICA.** — Conflicts between the European powers and the natives have been numerous during the period under review. Great Britain has had trouble in both Uganda and Zambesia. Her newly-arrived commissioner in the former land effected an adjustment between the Catholic and the Protestant factions in April, by which territorial rights were assigned to each, and the chief political offices were equally divided between them. Then followed in June an uprising of the Mohammedan faction, who were, however, promptly suppressed by the authorities, supported by the united Christian population. More serious was the situation developed in *Mashonaland*, in the territory of the South African Company. The Matabele, a warlike Zulu tribe a little south of the Zambesi, while raiding the peaceful natives near the company's forts in July, were driven off by a detachment of the company's police. For this and other reasons the king, Lobengula, who had been friendly to the British, assumed a hostile attitude, and his soldiers engaged in skirmishing on the frontier. In October, accordingly, the company prepared a strong force, which, with the approval of the home government, entered the Matabele country,

and after some fighting had by November 1 driven the king out of his stronghold, Buluwayo. — In **Dahomey** King, Behanzin failed to fulfill his promise to surrender to the French, and General Dodds, after a trip to France, resumed in August his operations against the remnants of the king's forces. — In **Morocco** the building of new fortifications by the Spanish at their penal colony, Mellila, on the northern coast, was the occasion for a desperate attempt of the neighboring Moorish tribes, October 2, to destroy the works and the garrison. The attack was repulsed, but the Moors besieged the citadel held by the Spanish, and Spain, having reinforced the place, proceeded to organize a strong land and naval expedition that should thoroughly subdue the troublesome tribesmen. At the same time a demand was made upon the Sultan of Morocco for satisfaction, though the Sultan's authority over these particular tribes has never been very effective. It was reported that Spain had further demanded the payment of the expenses of her expedition — a demand which would open the way to a conquest of the whole Moorish dominion.

**LATIN AMERICA.** — Discontent with the administration of President Peixoto has resulted in **civil war in Brazil**. The long-standing insurrection in the state of Rio Grande do Sul gave the government much trouble in the spring and early summer, and the obnoxious governor, Castilhos, against whom the efforts of the malcontents were directed, was at last, in August, forced to resign. In the neighboring state of Santa Catharina, also, a successful popular uprising took place against the officials installed through the influence of the central government. Meanwhile, at Rio Janeiro itself, evidences appeared of opposition to the president. About the first of May, Admiral Wandelkolk of the navy sailed from the capital, and joined the insurgents in Rio Grande do Sul. He was followed and captured, however, by war-ships that remained faithful to Peixoto. On the 6th of September a more formidable defection occurred. Officers of the naval squadron in the harbor of Rio Janeiro, headed by Admiral Mello, formerly minister of marine, declared against Peixoto, and called for his retirement under threat of bombarding the city. As the army remained faithful, the president held his position. Mello carried out his threat, and on the 11th opened fire on the fortifications and public buildings of Rio Janeiro, but failed to gain any important advantage. Since then more or less fighting has been done along the shore, but as Peixoto has no adequate naval force and Mello has little support on land, a decisive conflict has been impossible. In October Mello, having established relations with the insurgents in the southern states was said to have set up a provisional government at Desterro, in Santa Catharina. Peixoto at the same time began the preparation of a naval force by purchasing and equipping a number of cruisers and torpedo boats in New York. — The high personal character of President Saenz Peña, from whom so much was expected, has not prevented a serious **Radical insurrection in Argentina**. The president's pacific dispo-

sition contributed to make his government the plaything of more energetic politicians. A reconstruction of his cabinet, June 8, on the idea of "fusion" of the leading parties, proved wholly unsuccessful, and a month later he was forced to a new reconstruction, with the introduction of a considerable Radical element. The Radicals are an offshoot from the Union Civica (known also, from its leader, as the Mitrist party), which effected the overthrow of President Celman in 1890 (see this *QUARTERLY*, V, 747). They claim that the revolution then was incomplete and that the influence of the party to which Celman belonged, the Union National (or Roquists) is still too strong in the administration. At the end of July the adherents of the Radical party, apparently with the connivance of ministers, rose against the Roquist-state governments in a number of the states of the confederation, and gained considerable successes in several. Intervention by the federal authorities was authorized by the Congress, but it was executed rather in a spirit of sympathy with the insurgents. A new ministerial crisis then ensued, August 14, the Radical element was excluded from the cabinet, and the intervention was carried out in earnest. Thereupon the Radicals planned a general movement for the overthrow of the federal government, but by the prompt proclamation of martial law and corresponding energy in dealing with outbreaks in Buenos Ayres and elsewhere, the authorities were able to preserve their power. — In Central America a **revolution in Nicaragua**, which for thirty years had been free from civil war, broke out April 29. The object was the deposition of President Sacaza. A pitched battle on May 20 resulted in a decisive defeat of the government's troops, and on June 1, under an arrangement effected through the efforts of the United States minister, Sacaza turned over his office to a member of the Senate, Machado. On July 12, however, a fresh revolution broke out against the new government. The president was seized and held by the insurgents, and his place was taken provisionally by Zavalla, who had been the leading spirit in the original uprising. A succession of hard fights were attended by the steady triumph of the new insurgents, and at the end of July peace was made on condition of Zavalla's relinquishment of power. Shortly afterward General Zelayo, leader of the successful party, became president. The insurrection in Honduras, which was in successful progress at the beginning of this *RECORD*, was crushed by a government victory in the middle of May.

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